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FEDERAL REGISTER

Vol. 81 Monday,
No. 181 September 19, 2016

Pages 64049–64344

OFFICE OF THE FEDERAL REGISTER

1985

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Presidential Documents

Title 3—

The President

Proclamation 9493 of September 14, 2016

National Hispanic Heritage Month, 2016

By the President of the United States of America

A Proclamation

Since our founding, our Nation has drawn strength from the diversity of our people. With faith and passion, a sturdy work ethic and profound devotion to family, Hispanics have helped carry forward our legacy as a vibrant beacon of opportunity for all. Whether their ancestors have been here for generations or they are among the newest members of our American family, they represent many countries and cultures, each adding their own distinct and dynamic perspective to our country's story. In celebration of National Hispanic Heritage Month, we honor the contributions Hispanics have made throughout our history, and we highlight an important part of the rich diversity that keeps our communities strong.

Hispanic Americans have had a lasting impact on our history and have helped drive hard-won progress for all our people. They are the writers, singers, and musicians that enrich our arts and humanities; the innovative entrepreneurs steering our economy. They are the scientists and engineers revolutionizing our ways of life and making sweeping new discoveries; the advocates leading the way for social and political change. They are the brave men and women in uniform who commit themselves to defending our most cherished ideals at home and abroad. And their lasting achievements and devotion to our Nation exemplify the tenacity and perseverance embedded in our national character.

My Administration stands firmly committed to opening doors of opportunity for all Americans and addressing issues of vital importance to the Hispanic community. The unemployment rate for the Hispanic community has dropped steadily since I took office, and we have worked to support the growth and development of Hispanic-owned businesses. Last year, Hispanic Americans saw the largest gains of any racial or ethnic group in median income and experienced among the greatest reductions in poverty. We have fought to make home ownership more affordable and to raise the Federal minimum wage—which would benefit more than 8 million Hispanic workers. Thanks to the Affordable Care Act, 4 million Hispanic non-elderly adults have gained access to quality, affordable health care, reducing the uninsured rate among Hispanics by more than a quarter. The high school graduation rate among Hispanic students is rising, and we have taken action to help more Hispanic students enroll in college. And by charting a new course in our relationship with Cuba, we are strengthening communication and bolstering relations between friends and family in both countries—reinforcing many ties to Latin America.

Our Nation's remarkable story began with immigration. Today, we must continue seeking to make the promise of our Nation real in the lives of all people, including for those who are Americans by every measure except for a piece of paper. Through the Deferred Action for Childhood Arrivals policy, hardworking young Dreamers—including many Hispanics—have been given more opportunities to reach for their highest aspirations. I remain deeply committed to passing comprehensive immigration reform, and my Administration will continue doing all that we can to carry forward our Nation's legacy as a melting pot of the world. Through the work of the

White House Task Force on New Americans, we are striving to support the integration of immigrants and refugees into our communities. We will continue to welcome those fleeing persecution, including those from the Western Hemisphere, and we will keep working to make our immigration system fairer and smarter.

This month, let us reflect on the countless ways in which Hispanics have contributed to our Nation's success, and let us reaffirm our commitment to expanding opportunity and building an ever brighter future for all. Let us embrace the diversity that strengthens us and continue striving to ensure the American dream is within reach for generations of Hispanics to come.

To honor the achievements of Hispanics in America, the Congress by Public Law 100–402, as amended, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as "National Hispanic Heritage Month."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 15 through October 15, 2016, as National Hispanic Heritage Month. I call upon public officials, educators, librarians, and all Americans to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–22578
Filed 9–16–16; 8:45 am]
Billing code 3295–F6–P

Rules and Regulations

Federal Register
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5591; Directorate Identifier 2014–NM–193–AD; Amendment 39–18651; AD 2016–19–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2005–15–07 for certain Airbus Model A320–111 airplanes and Model A320–200 series airplanes. AD 2005–15–07 required installing insulator and cable ties to the electrical cables of the S routes at the gaps in the raceway in the wing trailing edge and the wing tip and wing root areas. This new AD requires additional modifications in the trailing edges of both wings. This new AD also removes airplanes from the applicability. This AD was prompted by reports of wire chafing in the left-hand wing trailing edge. We are issuing this AD to prevent wire chafing in the trailing edge of the wings, which could result in a short circuit in the vicinity of the fuel tanks, consequently resulting in a potential source of ignition in a fuel tank vapor space and consequent fuel tank explosion.

DATES: This AD is effective October 24, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 24, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5591.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5591; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2005–15–07, Amendment 39–14196 (70 FR 43024, July 26, 2005) (“AD 2005–15–07”). AD 2005–15–07 applied to certain Airbus Model A320–111 airplanes and Model A320–200 series airplanes. The NPRM published in the **Federal Register** on April 20, 2016 (81 FR 23199). The NPRM was prompted by reports of wire chafing in the left-hand wing trailing edge. The NPRM proposed to continue to require installing insulator and cable ties to the electrical cables of the S routes at the gaps in the raceway in the wing trailing edge and the wing tip and wing root areas. The NPRM proposed to require additional modifications in the trailing edges of both wings. The NPRM also proposed to remove airplanes from the applicability. We are issuing this AD to prevent wire chafing in the trailing edge of the wings, which could result in a short circuit in the vicinity of the fuel tanks, consequently resulting in a potential source of ignition in a fuel tank vapor space and consequent fuel tank explosion.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0198, dated September 5, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Airbus Model A320–211, –212, and –231 airplanes. The MCAI states:

> Prompted by an accident * * *, the FAA published Special Federal Aviation Regulation (SFAR) 88 [(66 FR 23086, May 7, 2001)], and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.
>
> Prompted by that regulation, the results of an Airbus review of the A320 type design identified, on certain aeroplanes, a possible ignition source in fuel tank vapour space(s). That condition, if not corrected, could result in a fuel tank explosion and consequent loss of the aeroplane.
>
> It was, therefore, decided to modify the cable routes of the wing trailing edge, aft of the rear spar and wing tip of those aeroplanes, to be applied in service in accordance with the instructions of Airbus Service Bulletin (SB) A320–24–1062 Revision 05. Following that decision, DGAC France issued AD F–2004–173 (EASA approval number 2004–10570) to require that modification.
>
> After that AD was issued, it was found that additional work, introduced by Airbus SB A320–24–1062 Revision 05, was not included as part of the normal accomplishment instructions, which meant that the additional work might not be accomplished. Consequently, EASA issued AD 2008–0051, retaining the requirements of DGAC France AD F–2004–173 [which corresponds to FAA AD 2005–15–07], which was superseded, and required the accomplishment of the additional work in accordance with the instructions of Airbus SB A320–24–1062 Revision 06. EASA AD 2008–0051 was revised to reduce the Applicability and to add a clarification to paragraph (2).
>
> After EASA AD 2008–0051R1 was issued, some operators reported wire chafing in the left hand wing trailing edge. Investigation

established that the wire chafing, initiated at raceway gaps, was either due to maintenance action(s), or to structure vibrations.

Prompted by these findings, Airbus developed two modifications to prevent any further wire chafing by introducing an additional protection at raceway gaps and a new cable standard in the trailing edges of both wings.

Airbus published SB A320–92–1049 and SB A320–92–1052 to make these modifications available for in-service application. At the time of incorporation of Airbus SB A320–24–1062, these two modifications were considered recommended only.

EASA recently determined that this condition, if not corrected, could lead to a short circuit on 115 volts in the vicinity of fuel tanks, consequently creating another risk of ignition source in a fuel tank vapour space.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2008–0051R1, which is superseded, and requires modifications to install the additional anti-chafing protection and the new cable standard.

This AD also removes Model A320–214, –232, and –233 airplanes from the applicability because those airplane models have been modified in production or in service. This AD also removes Model A320–111 airplanes from the applicability because those airplanes are no longer on the U.S. type certificate data sheet (there are no more A320–111 airplanes in service in the U.S. and none in storage). You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5591.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Service Bulletins A320–92–1049, Revision 01, dated November 28, 2011; A320–92–1052, dated December 5, 2007; and A320–24–1062, Revision 07, dated November 28, 2011.

Airbus Service Bulletin A320–92–1049, Revision 01, dated November 28, 2011, describes procedures for installing the additional anti-chafing protection.

Airbus Service Bulletin A320–92–1052, dated December 5, 2007, describes procedures for replacing the current electrical cable with the new standard one.

Airbus Service Bulletin A320–24–1062, Revision 07, dated November 28, 2011, describes procedures for installing insulator and cable ties to the electrical cables of the S routes at the gaps in the raceway in the wing trailing edge and the wing tip and wing root areas.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 47 airplanes of U.S. registry.

The actions required by AD 2005–15–07, and retained in this AD take about 35 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2005–15–07 is $2,975 per product.

We also estimate that it would take about 76 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $13,000 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $914,620, or $19,460 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2005–15–07, Amendment 39–14196 (70 FR 43024, July 26, 2005), and adding the following new AD:

2016–19–02 Airbus: Amendment 39–18651; Docket No. FAA–2016–5591; Directorate Identifier 2014–NM–193–AD.

(a) Effective Date

This AD is effective October 24, 2016.

(b) Affected ADs

This AD replaces AD 2005–15–07, Amendment 39–14196 (70 FR 43024, July 26, 2005) ("AD 2005–15–07").

(c) Applicability

This AD applies to Airbus Model A320–211, –212, and –231 airplanes, certificated in any category, all manufacturer serial numbers except those on which Airbus Modification 22626 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power; and Code 92.

(e) Reason

This AD was prompted by reports of wire chafing in the left-hand wing trailing edge. We are issuing this AD to prevent wire chafing in the trailing edge of the wings, which could result in a short circuit in the vicinity of the fuel tanks, consequently resulting in a potential source of ignition in a fuel tank vapor space and consequent fuel tank explosion.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Modification, With Revised Service Information

This paragraph restates the requirements of paragraph (f) of AD 2005–15–07, with revised service information. Within 60 months after August 30, 2005 (the effective date of AD 2005–15–07), install insulator and cable ties to the electrical cables of the S routes at the gaps in the raceway in the wing trailing edge and the wing tip and wing root areas, in accordance with Airbus Service Bulletin A320–24–1062, Revision 05, dated June 27, 2002; or the Accomplishment Instructions of Airbus Service Bulletin A320–24–1062, Revision 07, dated November 28, 2011. As of the effective date of this AD, only Airbus Service Bulletin A320–24–1062, Revision 07, dated November 28, 2011, may be used.

(h) New Requirement of This AD: Modification of Trailing Edges

Within 60 months after the effective date of this AD, modify the trailing edges of both wings by accomplishing the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Install the additional anti-chafing protection in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–92–1049, Revision 01, dated November 28, 2011.

(2) Replace the current electrical cable with the new standard one in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–92–1052, dated December 5, 2007. During the replacement, ensure that the anti-chafing protection specified in Airbus Service Bulletin A320–92–1049, Revision 01, dated November 28, 2011, as required by paragraph (h)(1) of this AD, remains in place.

(i) New Additional Modification

For airplanes on which the installation specified in Airbus Service Bulletin A320–24–1062, Revision 05, dated June 27, 2002, has been done: Within 60 months after the effective date of this AD, install insulators and cable ties, in accordance with "Modification—Additional Work (Introduced at Revision No. 06)" of the Accomplishment Instructions of Airbus Service Bulletin A320–24–1062, Revision 07, dated November 28, 2011.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraphs (g) and (i) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–24–1062, Revision 06, dated June 26, 2007, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–92–1049, dated July 23, 2007, which is not incorporated by reference in this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0198, dated September 5, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5591.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(4) and (m)(5) of this AD.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on October 24, 2016.

(i) Airbus Service Bulletin A320–24–1062, Revision 07, dated November 28, 2011.

(ii) Airbus Service Bulletin A320–92–1049, Revision 01, dated November 28, 2011.

(iii) Airbus Service Bulletin A320–92–1052, dated December 5, 2007. (4) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 6, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–22191 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4229; Directorate Identifier 2015–CE–038–AD; Amendment 39–18657; AD 2016–19–08]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Viking Air Limited Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and

correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion of the elevator control rod and of the elevator actuating lever on the control column. We are issuing this AD to detect and correct corrosion and/or cracking of the elevator control rod assemblies and the elevator actuating lever, which if not detected and corrected, could cause these components to fail. This failure could result in loss of control.

DATES: This AD is effective October 24, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 24, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4229; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Viking Air Limited Technical Support, 1959 De Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; Fax: 250–656–0673; telephone: (North America) (800) 663–8444; email: *technical.support@vikingair.com;* Internet: *http://www.vikingair.com/support/service-bulletins.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for Docket No. FAA–2016–4229.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7329; fax: (516) 794–5531; email: *aziz.ahmed@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Viking Air Limited Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. The NPRM was published in the **Federal Register** on March 3, 2016 (81 FR 11132). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> There have been a number of reports of corrosion and/or cracking at the elevator actuating lever on the control column, in the elevator control rod assemblies, and at the rod end plug.
>
> Undetected corrosion and/or cracking of the elevator control rod assemblies or elevator actuating lever may lead to the failure of the components with consequent loss of aeroplane control.

The MCAI requires visually inspecting the elevator control rod assemblies, the elevator actuating lever on the control column, and the control column torque tube for corrosion, cracking, and/or other damages, and repairing or replacing damaged parts. The MCAI also requires incorporating revisions into the maintenance program and adds a life limit to certain elevator control rod assemblies. The MCAI can be found in the AD docket on the Internet at *https://www.regulations.gov/document?D=FAA-2016-4229-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (81 FR 11132, March 3, 2016) and the FAA's response to each comment.

Request To Change Inspection Procedure for the Elevator Control Rod

Roger Braun requested allowance for inspecting the elevator control rod without removing it from the airplane.

The commenter stated that even though the inspection procedure in Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'C', dated July 17, 2015 (SB No. V2/0005, Rev. C), requires removing the elevator control rod, that doing so is excessively invasive and adds an increased risk of maintenance errors and/or damage to the part over simply inspecting it in place.

We do not agree with the commenter. The elevator control rod ends are not required to be removed from its assembly. Removal of the elevator control rod assembly is necessary to do the required inspections. Viking Air Limited and Transport Canada determined that removing the elevator control rod assembly is necessary to adequately do the inspection, and the process of removing the elevator control rod assembly does not pose additional risk to safety.

We have not changed the AD based on this comment.

Request To Rename/Revise the Airworthiness Limitations Section

Roger Braun requested to omit the requirement to revise the Airworthiness Limitation section and instead include the repetitive inspection in the final rule AD action. The commenter stated that it is very hard to find the compliance times for the repetitive inspections, which are embedded in the temporary revisions to be inserted into the Airworthiness Limitation section of the FAA-approved maintenance program. The commenter asked that instead of inserting continued airworthiness instructions into the manual, why not include the language "repeat inspection every 400 flight hours" in the AD actions?

We partially agree. We agree that the repetitive inspection requirements that are embedded in the temporary revisions are not clear or easy to understand. However, we disagree with writing the repetitive inspections into the AD because Viking Air Limited plans to have all the required inspections in their maintenance manual rather than dispersed over numerous other documents. We have determined that revising the Airworthiness Limitations section of the FAA-approved maintenance program to mandate the repetitive inspections is acceptable. To clarify the intent of the of the Airworthiness Limitations section, we have changed the heading of that section to Repetitive Inspection in order to make the repetitive inspections clear.

We have changed the AD based on this comment.

Request To Allow Minor Surface Corrosion

Roger Braun requested that the final rule AD action be changed to include an allowance for minor surface corrosion.

The commenter stated that the proposed AD and the related service information are vague in delineating what corrosion is considered unacceptable by stating if "any corrosion" is found, which would be an unrealistic standard. The commenter requested relief for minor surface corrosion.

We do not agree. Viking Air Limited and Transport Canada determined that all corrosion is unacceptable. Small surface corrosion must also be repaired following the SB No. V2/0005, Rev. C, dated July 17, 2015.

We have not changed the AD based on this comment.

Request for Clarification of Life Limit for Part Number (P/N) C2FC619A–11

Roger Braun requested clarification in the final rule AD action to clearly state that P/N C2FC619A–11 elevator control rod is not a life-limited part.

The commenter stated that it is not entirely clear in the proposed AD that elevator control rod, P/N C2FC619A–11, is not a life-limited part. The commenter requested further clarification in the final rule AD action specifying that there is no life limit on P/N C2FC619A–11.

We agree with the commenter and have added a statement in the AD to further clarify that the P/N C2CF619A–11 elevator control rod has no life limit.

We have changed the AD based on this comment.

Request To Extend Repetitive Inspection Compliance Times

Roger Braun requested relief for the repetitive inspection of the elevator control rods with a known date of manufacture, for example, 5 or 10 years.

We infer that the commenter wants the repetitive inspections changed from every 400 hours time-in-service (which is what is specified in the Temporary Revisions to the Airworthiness Limitations section) to a repetitive 5-year inspection.

We do not agree. Viking Air Limited and Transport Canada determined that damage can occur at any time. Therefore, no threshold is provided that will allow a certain period of time before the start of the repetitive inspection requirement.

We have not changed the AD based on this comment.

Request To Change Repetitive Inspection Compliance Time

Mark Henshaw requested the repetitive inspections be yearly/12-month inspections. The commenter stated that he operated his airplane 400–500 hours per summer season, as most operators do. The commenter stated that the 400-hour recurring inspection will require the operators to remove the airplane from service, remove the pilot floor panel, pilot side panels, oil cooler cowl, side after cowl, unbolt the control column bearings and the inboard control column mount then remove it, pull the elevator control rod out of the airplane, and then do the elevator control rod inspection. We infer that the commenter is making the point that the inspection is very labor intensive. The commenter stated that this inspection would fit nicely into a yearly/12-month inspection criteria instead of what probably will fall right in the middle of their busy season when a 100-hour inspection may or may not have been scheduled. This inspection will add at least 4–6 hours (on a good night) to a routine 100-hour inspection.

The commenter requested an alternative of yearly/every 12 months, that way all the elevator control rods get looked at every year and nobody has to stop their airplane right in the middle of their busy season for this inspection.

The commenter stated that there has never been a requirement to remove the elevator control rod, and does agree that doing the inspection is great idea, but not every 400 hours.

We do not agree that yearly/12 month inspections are an acceptable level of safety to address the unsafe condition. The 400-hour inspection should assure that any damage will be detected before it rises to an unsafe level. Additionally, Viking Air Limited informed us that there are existing inspections specified in the applicable maintenance manuals around the same affected area as this AD that requires lifting of floor boards.

We have not changed the AD based on this comment.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (81 FR 11132, March 3, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 11132, March 3, 2016).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Related Service Information Under 1 CFR Part 51

We reviewed Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'C', dated July 17, 2015; Temporary Revision No.: 2–38, dated March 4, 2015, of VIKING PSM NO.: 1–2–2, AIRCRAFT: DHC–2 BEAVER, SERIES: ALL, PUBLICATION: MAINTENANCE MANUAL; and Temporary Revision No.: 2T–14, dated March 4, 2015, of VIKING PSM NO.: 1–2T–2, AIRCRAFT: DHC–2 TURBO BEAVER, SERIES: ALL, PUBLICATION: MAINTENANCE MANUAL. The service information describes procedures for doing detailed visual inspections of the elevator control rod assemblies, the elevator actuating lever on the control column, and the control column torque tube for corrosion, cracking, and/or other damages. The service bulletin also describes procedures for repairing or replacing damaged parts. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

Costs of Compliance

We estimate that this AD will affect 135 products of U.S. registry. We also estimate that it will take about 11.5 work-hours per product to comply with the basic inspection requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the basic inspection requirements of this AD on U.S. operators to be $131,962.50, or $977.50 per product.

In addition, we estimate that any necessary follow-on actions will take about 8 work-hours and require parts costing $1,859, for a cost of $2,539 per product. Contact Viking Air Limited at the address identified in the **ADDRESSES** section of this AD for current pricing and lead time. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4229; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2016–19–08 Viking Air Limited: Amendment 39–18657; Docket No. FAA–2016–4229; Directorate Identifier 2015–CE–038–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 24, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion of the elevator control rod and of the elevator actuating lever on the control column. We are issuing this AD to detect and correct corrosion and/or cracking of the elevator control rod assemblies and the elevator actuating lever, which if not detected and corrected, could cause these components to fail. This failure could result in loss of control.

(f) Actions and Compliance

Comply with this AD within the compliance times specified in paragraphs (g) through (l) of this AD, including all subparagraphs, unless already done.

(g) Initial Inspections

Within the next 120 days after October 24, 2016 (the effective date of this AD) or within the next 100 hours time-in-service (TIS) after October 24, 2016 (the effective date of this AD), whichever occurs first, do the following inspections in accordance with section I. PLANNING INFORMATION, paragraph D. of Viking DHC–2 Beaver Service Bulletin Number: V2/0005, Revision "C", dated July 17, 2015:

(1) For airplanes with an installed elevator control rod assembly, part number (P/N) C2CF619A, do a detailed visual inspection of P/N C2CF619A for corrosion, cracking, and/or other damages.

(2) For airplanes with an installed elevator control rod assembly, P/N CT2CF1021–1, do a detailed visual inspection of P/N CT2CF1021–1 for corrosion, cracking, and/or other damages.

(3) For all airplanes, do a detailed visual inspection of the elevator actuating lever on the control column and the control column torque tube for corrosion, cracking and/or other damages.

(h) Repetitive Inspections (Airworthiness Limitations)

Within the next 30 days after October 24, 2016 (the effective date of this AD), insert the following into the Airworthiness Limitations section of the FAA-approved maintenance program (*e.g.,* maintenance manual). This revision to the Limitations section incorporates repetitive inspections of the elevator control rod assemblies, the elevator actuating lever, and the control column torque tube for corrosion, cracks, and/or other damage. Insert item 20A., of Part 3, in Appendix 2 of Temporary Revision No.: 2–38, dated March 4, 2015, into the VIKING PSM NO.: 1–2–2, AIRCRAFT: DHC–2 BEAVER, SERIES: ALL, PUBLICATION: MAINTENANCE MANUAL; and Insert item 20A., in Part 4, of Temporary Revision No.: 2T–14, dated March 4, 2015, into VIKING PSM NO.: 1–2T–2, AIRCRAFT: DHC–2 TURBO BEAVER, SERIES: ALL, PUBLICATION: MAINTENANCE MANUAL.

(i) Replacement/Repair for P/N C2CF619A

(1) Before further flight after the inspection required in paragraph (g)(1) of this AD, if corrosion, cracking, or other damages are found, replace P/N C2CF619A with P/N C2CF619A–11 following section I. PLANNING INFORMATION, paragraph D. of Viking DHC–2 Beaver Service Bulletin Number: V2/0005, Revision "C", dated July 17, 2015, or contact Viking Air Limited at the address specified in paragraph (o) of this AD for an FAA-approved repair and incorporate the repair.

(2) Within the next 120 days after October 24, 2016 (the effective date of this AD) or within the next 100 hours TIS after October 24, 2016 (the effective date of this AD), whichever occurs first, you may replace P/N C2CF619A with P/N C2CF619A–11 instead of doing the inspection required in paragraph (g)(1) of this AD. Do the replacement following section I. PLANNING INFORMATION, paragraph D. of Viking DHC–2 Beaver Service Bulletin Number: V2/0005, Revision "C", dated July 17, 2015.

(3) After replacing P/N C2CF619A with P/N C2CF619A–11, you must still do the repetitive inspections of the elevator control rod assemblies following the Airworthiness Limitations section of the FAA-approved maintenance program (*e.g.,* maintenance manual) specified in paragraph (k)(1) of this AD.

(j) Replacement/Repair for P/N CT2CF1021–1

(1) Before further flight after the inspection required in paragraph (g)(2) of this AD, if corrosion, cracking, or other damages are found, replace the elevator control rod assembly with P/N CT2CF1021–1 that has been inspected and is free of corrosion, cracking, or other damages following section I. PLANNING INFORMATION, paragraph D. of Viking DHC–2 Beaver Service Bulletin Number: V2/0005, Revision "C", dated July 17, 2015, or contact Viking Air Limited at the address specified in paragraph (o) of this AD for an FAA-approved repair and incorporate the repair.

(2) After replacing or repairing P/N CT2CF1021–1, you must still do the repetitive inspections of the elevator control rod assemblies following the Airworthiness Limitations section of the FAA-approved maintenance program (*e.g.,* maintenance manual) specified in paragraph (k)(1) of this AD.

(k) Repair of the Elevator Actuating Lever

Before further flight after the inspection required in paragraph (g)(3) of this AD, if corrosion, cracking, or other damages are found, contact Viking Air Limited at the address specified in paragraph (o) of this AD for an FAA-approved repair and incorporate the repair.

(l) Restrictions

As of October 24, 2016 (the effective date of this AD), do not install P/N C2CF619A or C2CF619A–9 as a replacement part.

(m) Life Limit for P/N C2CF619A

As of October 24, 2016 (the effective date of this AD), elevator control rod assemblies, P/N C2CF619A, are life-limited to 15 years and must be replaced with P/N C2CF619A–11, which is not a life-limited part, at the following compliance time:

(1) If, as of October 24, 2016 (the effective date of this AD), the age of the installed P/N C2CF619A is known, it must be replaced before exceeding the life limit or within the next 12 months after October 24, 2016 (the effective date of this AD), whichever occurs later.

(2) If, as of October 24, 2016 (the effective date of this AD), the age of the installed P/N C2CF619A is not known, it must be replaced within the next 12 months after October 24, 2016 (the effective date of this AD).

(n) Credit for Actions Accomplished in Accordance With Previous Service Information

Credit will be given for the inspections required in paragraphs (g)(1) through (3) of this AD if they were done before October 24, 2016 (the effective date of this AD) following Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'NC', dated March 26, 2012; Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'A', dated November 7, 2014; or Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'B', dated March 4, 2015.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Aziz Ahmed, Aerospace Engineer, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7329; fax: (516) 794–5531; email: *aziz.ahmed@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(p) Related Information

Refer to MCAI Transport Canada AD No. CF–2015–21, dated July 30, 2015; and Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'NC', dated March 26, 2012; Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'A', dated November 7, 2014; or Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'B', dated March 4, 2015, for related information. You may examine the MCAI on the Internet at *https://www.regulations.gov/document?D=FAA-2016-4229-0002.*

(q) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Viking DHC–2 Beaver Service Bulletin Number: V2/0005, Revision "C", dated July 17, 2015.

(ii) Item 20A., of Part 3, in Appendix 2 of Temporary Revision No.: 2–38, dated March 4, 2015, into the VIKING PSM NO.: 1–2–2, AIRCRAFT: DHC–2 BEAVER, SERIES: ALL, PUBLICATION: MAINTENANCE MANUAL.

(iii) Item 20A., in Part 4, of Temporary Revision No.: 2T–14, dated March 4, 2015, into VIKING PSM NO.: 1–2T–2, AIRCRAFT: DHC–2 TURBO BEAVER, SERIES: ALL, PUBLICATION: MAINTENANCE MANUAL.

(3) For Viking Air Limited service information identified in this AD, contact Viking Air Limited Technical Support, 1959 De Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; Fax: 250–656–0673; telephone: (North America) (800) 663–8444; email: *technical.support@vikingair.com;* Internet: *http://www.vikingair.com/support/service-bulletins.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4229.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on September 8, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–22183 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5035; Directorate Identifier 2015–NM–042–AD; Amendment 39–18650; AD 2016–19–01]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0070 and Mark 0100 airplanes. This AD was prompted by reports of cracking in a certain area of the pressure bulkhead webplate and skin connection angle. This AD requires a one-time inspection of the affected pressure bulkhead webplate and skin connection angle, and corrective actions if necessary. We are issuing this AD to detect and correct cracking of the pressure bulkhead webplate and skin connection angle that could lead to sudden inflight decompression of the airplane, resulting in injury to occupants.

DATES: This AD is effective October 24, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 24, 2016.

ADDRESSES: For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5035.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5035; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1139.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F28 Mark 0070 and Mark 0100 airplanes. The NPRM published in the **Federal Register** on March 29, 2016 (81 FR 17417) (“the NPRM”). The NPRM was prompted by reports of cracking in a certain area of the pressure bulkhead webplate and skin connection angle. The NPRM proposed to require a one-time inspection of the affected pressure bulkhead webplate and skin connection angle, and corrective actions if necessary. We are issuing this AD to detect and correct cracking of the pressure bulkhead webplate and skin connection angle that could lead to sudden inflight decompression of the airplane, resulting in injury to occupants.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0024, dated February 19, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0070 and Mark 0100 airplanes. The MCAI states:

> Service experience with the Fokker 100 type design has shown that cracking can occur in the pressure bulkhead webplate and skin connection angle on the right hand (RH) side at station 14911 (station 12447 for F28 Mark 0070) at stringer 67 of fuselage section 2, before reaching the existing threshold for inspection per ALS [Airworthiness Limitations Section] task 533016–00–03 (F28 Mark 0100) or task 533016–01–03 (F28 Mark 0070). Any cracks in this area are not visible from the outside (covered by fairing) until they reach a critical length.
>
> This condition, if not detected and corrected, could lead to sudden in-flight decompression of the aeroplane, possibly resulting in injury to occupants.
>
> To address this potential unsafe condition, Fokker Services published Service Bulletin (SB) SBF100–53–128, which provides inspection instructions to detect any crack in the affected area.
>
> For the reasons described above, this [EASA] AD requires a one-time inspection of the affected pressure bulkhead webplate and skin connection angle, and, depending on findings, accomplishment of applicable corrective action(s).
>
> This [EASA] AD is considered to be an interim action and further AD action may follow, possibly to lower the current ALS task threshold, if justified by the inspection results.

Corrective actions include repair of cracking in the skin connection angle and pressure bulkhead webplate, as applicable.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5035.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Fokker Service Bulletin SBF100–53–128, dated November 12, 2014; and Fokker Service Bulletin SBF100–53–129, dated February 16, 2015. The service information describes procedures for inspection of the affected pressure bulkhead webplate and skin connection angle, and corrective actions if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 8 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD, and 1 work-hour per product for reporting. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,360, or $170 per product.

In addition, we estimate that any necessary follow-on actions will take about 46 work-hours and require parts costing $2,000, for a cost of $5,910 per product. We have no way of determining the number of aircraft that might need these actions.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–19–01 Fokker Services B.V.: Amendment 39–18650. Docket No. FAA–2016–5035; Directorate Identifier 2015–NM–042–AD.

(a) Effective Date

This AD is effective October 24, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F28 Mark 0070 and F28 Mark 0100 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of cracking in the pressure bulkhead webplate and skin connection angle. We are issuing this AD to detect and correct cracking of the pressure bulkhead webplate and skin connection angle that could lead to sudden inflight decompression of the airplane, resulting in injury to occupants.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection

At the time specified in paragraph (h) of this AD: Do a detailed inspection of the pressure bulkhead webplate and skin connection angle on the right-hand side at station 14911 (for Model F28 Mark 0100 airplanes) or station 12447 (for Model F28 Mark 0070 airplanes) at stringer 67 of fuselage section 2, as applicable, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–128, dated November 12, 2014. This AD does not require action for airplanes which, as of the effective date of this AD, have accumulated less than 30,000 flight cycles.

(1) If any crack is found in the skin connection angle, before further flight, repair the skin connection angle, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–129, dated February 16, 2015.

(2) If any crack is found in the pressure bulkhead webplate, before further flight, repair the pressure bulkhead webplate, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–129, dated February 16, 2015.

(h) Compliance Times

At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, do the actions required by paragraph (g) of this AD.

(1) For airplanes that have accumulated less than 40,000 total flight cycles as of the effective date of this AD, do the actions in paragraph (g) of this AD within 2,000 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated 40,000 or more total flight cycles as of the effective date of this AD, do the actions in paragraph (g) of this AD within 750 flight cycles after the effective date of this AD.

(i) Reporting

Submit a report of the findings (both positive and negative) of the inspection required by paragraph (g) of this AD to Fokker Services B.V. Engineering, Quality Department P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com,* in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–128, dated November 12, 2014, at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the inspection results; the airplane serial number; the total number of flight cycles and flight hours on the airplane; a sketch or photo to show the location of the crack(s) and damaged part(s), if applicable; and the length of each crack, if applicable.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0024, dated February 19, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5035.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Fokker Service Bulletin SBF100–53–128, dated November 12, 2014.

(ii) Fokker Service Bulletin SBF100–53–129, dated February 16, 2015.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 6, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–22186 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2006–0149]

RIN 0960–AF58

Revised Medical Criteria for Evaluating Respiratory System Disorders

Correction

In rule document 2016–13275, appearing on pages 37138–37153, in the issue of Thursday, June 9, 2016, make the following correction:

PART 404—FEDERAL OLD AGE, SURVIVORS AND DISABILITY INSURANCE (1950) [CORRECTED]

■ On page 37147, in the Table titled "TABLE II—FVC CRITERIA FOR 3.02B", the column headings are corrected to read as set forth below:

Height without shoes (centimeters) < means less than	Height without shoes (inches) < means less than	Table II–A		Table II–B	
		Age 18 to attainment of age 20		Age 20 or older	
		Females FVC less than or equal to (L, BTPS)	Males FVC less than or equal to (L, BTPS)	Females FVC less than or equal to (L, BTPS)	Males FVC less than or equal to (L, BTPS)

[FR Doc. C1–2016–13275 Filed 9–16–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 117 and 507

[Docket Nos. FDA–2011–N–0920, FDA–2011–N–0922]

Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food and Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals; Definition of Qualified Auditor; Announcement of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the effective date for the definition of qualified auditor in the two final rules that appeared in the **Federal Register** of September 17, 2015.

DATES: The effective date of paragraph (2) of the definition of qualified auditor in 21 CFR 117.3 and in 21 CFR 507.3, which published in the **Federal Register** of September 17, 2015 (80 FR 55908) and (80 FR 56170), is September 19, 2016.

FOR FURTHER INFORMATION CONTACT: *For questions relating to Current Good Manufacturing Practice, Hazard Analysis and Risk-Based Preventive Controls for Human Food:* Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2166.

For questions relating to Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals: Jeanette Murphy, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6246.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 17, 2015 (80 FR 55908), we published a final rule for "Current Good Manufacturing Practices, Hazard Analysis, and Risk-Based Preventive Controls for Human Food" (preventive controls for human food rule). In § 117.3, we included the definition of a qualified auditor. In the definition, we provided examples of qualified auditors. Paragraph 2 of the definition reads "An audit agent of a certification body that is accredited in accordance with regulations in part 1, subpart M of this chapter." At the time the final rule published, paragraph 2 referred to a provision in a future final rule: "Accreditation of Third-Party Certification Bodies to Conduct Food Safety Audits to Issue Certifications" (third-party certification rule). In the preamble to the preventive controls for human food rule, we stated that we would publish a document in the **Federal Register** announcing the effective date of paragraph (2) once we finalized the third-party certification rule (80 FR 55908 at 55954).

In the **Federal Register** of September 17, 2015 (80 FR 56170), we published a final rule for "Current Good Manufacturing Practices, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals" (preventive controls for animal food rule). In § 507.3, we included the definition of a qualified auditor. In the definition, we provided examples of qualified auditors. Paragraph 2 of the definition reads ''An audit agent of a certification body that is accredited in accordance with regulations in part 1, subpart M of this chapter.'' At the time the final rule published, paragraph 2 referred to a provision in a future final rule: ''Accreditation of Third-Party Certification Bodies to Conduct Food Safety Audits to Issue Certifications'' (third-party certification rule). In the preamble to the preventive controls for animal food rule, we stated that we would publish a document in the **Federal Register** announcing the effective date of paragraph (2) once we finalized the third-party certification rule (80 FR 55908 at 55954).

The final third-party certification rule (80 FR 74569) published in the **Federal Register** on November 27, 2015, with an effective date of January 26, 2016. This document announces that the effective date for paragraph 2 in the definition of qualified auditor in § 117.3 (80 FR 55098 at 56147) and § 507.3 (80 FR 56170 at 56339) is September 19, 2016.

Dated: September 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22494 Filed 9–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9773]

RIN 1545–BM70

Country-by-Country Reporting; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9773) that were published in the **Federal Register** on Thursday, June 30, 2016 (81 FR 42482). This document contains final regulations that require annual country-by-country reporting by certain United States persons that are the ultimate parent entity of a multinational enterprise group.

DATES: This correction is effective September 19, 2016 and is applicable on or after June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Melinda E. Harvey of the Office of Associate Chief Counsel (International) at (202) 317–6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9773) that are the subject of this correction are under section 1.6038–4 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9773) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6038–4 is amended by revising paragraph (d)(3)(iv) to read as follows:

§ 1.6038–4 Information returns required of certain United States persons with respect to such person's U.S. multinational enterprise group.

* * * * *

(d) * * *

(3) * * *

(iv) *Income tax paid and accrued tax expense of permanent establishment.* In the case of a constituent entity that is a permanent establishment, the amount of income tax paid and the amount of accrued tax expense referred to in paragraphs (d)(2)(iv) and (v) of this section should not include the income tax paid or tax expense accrued by the business entity of which the permanent establishment would be a part, but for the third sentence of paragraph (b)(2) of this section, in that business entity's tax jurisdiction of residence on the income derived by the permanent establishment.

* * * * *

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2016–22440 Filed 9–16–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 66

[Docket ID: DOD–2011–OS–0099]

RIN 0790–AI78

Qualification Standards for Enlistment, Appointment, and Induction

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This rule updates policies and responsibilities for basic entrance qualification standards for enlistment, appointment, and induction into the Armed Forces and delegates the authority to specify certain standards to the Secretaries of the Military Departments. It establishes the age, aptitude, character/conduct, citizenship, dependents, education, medical, physical fitness, and other disqualifying conditions that are causes for rejection from military service. Other standards may be prescribed in the event of mobilization or national emergency. This rule sets standards designed to ensure that individuals under consideration for enlistment, appointment, and/or induction are able to perform military duties successfully, and to select those who are the most suitable for Service life.

DATES: *Effective Date:* This rule is effective on October 19, 2016.

FOR FURTHER INFORMATION CONTACT: Dennis J. Drogo, (703) 697–9268.

SUPPLEMENTARY INFORMATION:

Public Comments and Responses

On March 27, 2015 (80 FR 16269–16277), the Department of Defense published an interim final rule titled ''Qualification Standards for Enlistment, Appointment, and Induction'' for a 60-day public comment period. The comment period ended on May 26, 2015. Three public comments were received. This section addresses those comments.

Comment 1: ''Abstain: the area were I live is not for emergency personnel conducting business that should be known as unwanted security.''

Response: The Department of Defense thanks the commenter for the comment. No changes were made to the final rule as a result.

Comment 2: A 16-year veteran of the Air Force is in favor of having a qualified Armed Service to serve our country but, the commenter thinks interviews should be a part of the entrance process. The commenter says that being able to meet the proposed criteria does not guarantee a qualified member of the Armed Forces.

Response: Prospective recruits are thoroughly vetted, to include multiple interviews at various stages of the entrance process, prior to taking the oath of service. No changes were made to the final rule.

Comment 3: A male 40 years of age asked for help understanding why multiple recruiters in his area are stating that the current cut off age for non-prior service (NPS) is 39 for some Reserve and Guard branches. The commenter states that recruiters sent him away due to him being too old.

Response: This part as further implemented by Department of Defense Instruction 1304.26, "Qualification Standards for Enlistment, Appointment, and Induction," provides the Department of Defense's minimum acceptable standards for military Service. The Services can establish more restrictive standards based on the needs and requirements of that specific Service. The difference between these two sets of standards explains the challenges faced by the writer of this comment. No changes were made to the final rule.

Although no changes were made to the final rule based on public comments received, a few edits were made due to reorganization, to provide clarification in the definition of "Dependent" and the waiver process, and to fix some grammatical issues.

Executive Summary

I. Purpose of This Regulatory Action

This rule updates policies and responsibilities for basic entrance qualification standards for enlistment, appointment, and induction into the Armed Forces and delegates the authority to specify certain standards to the Secretaries of the Military Departments.

II. Summary of the Major Provisions of This Regulatory Action

This regulatory action establishes age, aptitude, character/conduct, citizenship, dependents, education, medical, physical fitness, and other disqualifying conditions that are causes for rejection from military service. Other standards may be prescribed in the event of mobilization or national emergency. This regulatory action also sets standards designed to ensure that individuals under consideration for enlistment, appointment, and/or induction are able to perform military duties successfully and to select those who are the most suitable for Service life; and removes provisions related to homosexual conduct.

III. Costs and Benefits of This Regulatory Action

Administrative costs are negligible. The benefit of publishing this final rule is that it establishes standards to ensure that those who are enlisted, appointed, or inducted are the best qualified to complete their prescribed training and the best able to adapt to the military life. Failure to maintain these standards would result in a high attrition of personnel and would significantly increase training costs. The success of today's All-volunteer military is dependent on this policy.

Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has not been designated a "significant regulatory action" under section 3(f) of Executive Order 12866.

Public Law 104–4, "Unfunded Mandates Reform Act" (2 U.S.C. Ch. 25)

Section 1532 of title 2, United States Code requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

The Department of Defense certifies that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 66 does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The following existing clearances will be utilized:

0701–0101—"Air Force ROTC College Scholarship Application"
0701–0150—"Air Force Recruiting Information Support System—Total Forces (AFRISS–TF)"
0702–0073—"U.S. Army ROTC 4-year College Scholarship Application"
0702–0111—"Army ROTC Referral Information"
0703–0020—"Enlistee Financial Statement"
0704–0006—"Request for Verification of Birth"
0704–0173—"Record of Military Processing—Armed Forces of the United States"
0704–0413—"Medical Screening of Military Personnel"
0704–0415, "Application for Department of Defense Common Access Card—DEERS Enrollment"

The Department will continue to review its processes to identify collection instruments and consider how these collection tools may be improved and make revisions accordingly. The Department welcomes comments on how you think we can improve on our information collection activities.

Executive Order 13132, "Federalism"

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 66

Armed forces, Qualification standards.

Accordingly, the interim final rule published at 80 FR 16269–16277 on March 27, 2015 is adopted as a final rule with the following changes:

PART 66—[AMENDED]

■ 1. The authority citation for part 66 continues to read as follows:

Authority: 10 U.S.C. 504, 505, 520, 532, 12102, 12201, and 12205.

■ 2. Amend § 66.3 by revising paragraphs (2) and (3) of the definition of "Dependent" to read as follows:

§ 66.3 Definitions.

* * * * *

Dependent.

* * * * *

(2) An unmarried step-child under the age of 18 living with the applicant.

(3) An unmarried biological child or unmarried adopted child of the applicant under the age of 18.

* * * * *

■ 3. Amend § 66.5 by:
■ a. Revising paragraph (a).
■ b. Removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

The revision reads as follows:

§ 66.5 Responsibilities.

(a) Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA)):

(1) Acts as an advisor to the USD(P&R) on the Reserve enlistment and appointment standards.

(2) Acts as an advisor to the USD(P&R) on the height and weight requirements of the standards in § 66.6.

(3) Ensures the U.S. Military Entrance Processing Command assists the Military Services in implementing the standards in § 66.6.

* * * * *

§ 66.6 [Amended]

■ 4. Amend § 66.6 by:
■ a. In paragraph (b)(2)(ii), adding the words ",when not operating as a Service under the Navy" after "The Secretary of Defense (or the Secretary of Homeland Security for the Coast Guard."
■ b. In paragraph (b)(3)(ii), removing "Bearers of alternative credential" and adding in its place "Bearers of an alternative credential."
■ c. In paragraph (b)(8)(iii), adding a comma after the words "conviction" and "adjudication."
■ d. In paragraph (b)(8)(vi)(A), removing "(OPM)" and adding in its place "(Office of Personnel Management (OPM))."
■ e. In paragraph (b)(9)(ii), removing the comma after "The MEPS Chief Medical Officer."

§ 66.7 [Amended]

■ 5. Amend § 66.7 by:
■ a. At the end of paragraph (a) introductory text, adding the sentence "The waiver procedure is not automatic, and approval is based on each individual case."
■ b. In paragraph (a)(3), adding the sentence "Waivers are not authorized for cases noted in § 66.6(b)(8)(iii)." at the end of the paragraph.
■ c. In paragraph (b)(1), removing "State or federal jurisdiction" and adding in its place "the appropriate State or federal jurisdiction."

Dated: September 13, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–22408 Filed 9–16–16; 8:45 am]

BILLING CODE 5001–06–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1909

Access to Classified Information by Historical Researchers and Certain Former Government Personnel

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: Consistent with Executive Order 13526, the Central Intelligence Agency (CIA) is providing greater clarity about the procedures under which it may provide historical researchers and certain former Government personnel with access to classified CIA information. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act for rules of agency procedure and interpretation.

DATES: Effective September 19, 2016.

FOR FURTHER INFORMATION CONTACT: Joseph W. Lambert, (703) 613–1379.

SUPPLEMENTARY INFORMATION: Consistent with section 4.4 of Executive Order 13526, the CIA has revised its access regulations to more clearly set forth the procedures used to provide historical researchers and certain former Government personnel with access to classified CIA information. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure and interpretation.

List of Subjects in 32 CFR Part 1909

Archives and records, Classified information, Historical records.

■ Accordingly, the CIA is revising 32 CFR part 1909 as follows:

PART 1909—ACCESS TO CLASSIFIED CIA INFORMATION BY HISTORICAL RESEARCHERS AND CERTAIN FORMER GOVERNMENT PERSONNEL PURSUANT TO SEC. 4.4 OF EXECUTIVE ORDER 13526

Sec.
1909.1 Authority and purpose.
1909.2 Definitions.
1909.3 Contact for general information and requests.
1909.4 Suggestions and complaints.
1909.5 Requirements as to who may apply.
1909.6 Designation of authority to waive need-to-know and grant historical access requests.
1909.7 Receipt, recording, and tasking.
1909.8 Determinations on requests for access by former Presidents and Vice Presidents, former Presidential and Vice Presidential appointees or designees, and historical researchers.
1909.9 Action by the ARP.
1909.10 Final CIA decision.
1909.11 Notification of decision.
1909.12 Termination of access.

Authority: Executive Order 13526, 75 FR 707, 3 CFR 2010 Comp., p. 298–327 (or successor Orders).

§ 1909.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement section 4.4 of Executive Order 13526, as amended (or successor Orders); section 1.6 of Executive Order 12333, as amended (or successor Orders); section 102A of the National Security Act of 1947, as amended; and section 6 of the Central Intelligence Agency Act of 1947, as amended.

(b) *Purpose.* This part prescribes procedures for waiving the need-to-know requirement for access to classified information with respect to persons:

(1) Requesting access to classified CIA information as historical researchers;

(2) Requesting access to classified CIA information as a former Presidential or Vice Presidential appointee or designee; or

(3) Requesting access to classified CIA information as a former President or Vice President.

§ 1909.2 Definitions.

As used in this part:

Agency Release Panel or Panel or ARP means the CIA Agency Release Panel established pursuant to part 1900 of this chapter.

CIA means the Unites States Central Intelligence Agency.

Control means ownership or the authority of the CIA pursuant to Federal statute or legal privilege to regulate official or public access to records.

Coordinator means the CIA Information and Privacy Coordinator who serves as the CIA manager of the historical access process established pursuant to section 4.4 of the Order.

Days means business days. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Director of Security means the CIA official responsible for making determinations regarding all security and access approvals and overseeing execution of the necessary secrecy, nondisclosure, and/or prepublication review agreements as may be required.

Former Presidential or Vice Presidential appointee or designee means any person who has previously occupied a senior policy-making position in the Executive branch of the United States Government to which they were appointed or designated by the current or a former President or Vice President.

Historical researcher means any individual with professional training in the academic field of history (or related fields such as journalism) engaged in a historical research project that is intended for publication (or any similar activity such as academic course development) and that is reasonably intended to increase the understanding of the American public regarding the operations and activities of the United States Government. This term also means anyone selected by a former President or Vice President, or by a former Presidential or Vice Presidential appointee or designee, to assist them in historical research as a research associate.

Information means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or is under the control of the United States Government.

Interested party means any official in the executive, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

Originator means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of the Order.

Order means Executive Order 13526 of December 29, 2009 and published at 75 FR 707 (or successor Orders).

Senior Agency Official means the official designated by the DCIA under section 5.4(d) of the Order to direct and administer the CIA's program under which information is classified, safeguarded, and declassified.

§ 1909.3 Contact for general information and requests.

For general information on this part, to inquire about access to CIA information under this part, or to make a formal request for such access, please direct your communication in writing to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Inquiries will also by accepted by facsimile at (703) 613–3007. For general information only, the telephone number is (703) 613–1287. Collect calls cannot be accepted.

§ 1909.4 Suggestions and complaints.

The CIA welcomes suggestions, comments, or complaints with regard to its administration of the historical access provisions of Executive Order 13526. Members of the public shall address all such communications to the CIA Information and Privacy Coordinator. The CIA will respond as determined feasible and appropriate under the circumstances.

§ 1909.5 Requirements as to who may apply.

(a) *Historical researchers*—(1) *In general.* Any historical researcher as defined above may submit a request in writing to the Coordinator to be given access to classified information for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project.

(2) *Additional considerations.* In light of the very limited Agency resources, it is the policy of the Agency to consider applications for access by historical researchers (other than research associates) only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 13526, and where issues of internal resource availability and fairness to all members of the historical research community militate in favor of a particular grant.

(b) Former Presidential and Vice Presidential appointees or designees. Any former Presidential or Vice Presidential appointee or designee as defined herein may also submit a request to be given access to any classified items which they originated, reviewed, signed, or received while serving in that capacity. Requests from such appointees or designees shall be in writing to the Coordinator and shall identify the records containing the classified information of interest. Such appointees or designees may also request approval for a research associate, but there is no entitlement to such enlargement of access and the decision in this regard shall be in the sole discretion of the Senior Agency Official.

(c) Former Presidents and Vice Presidents. Any former President or Vice President may submit a request for access to classified CIA information. Requests from former Presidents or Vice Presidents shall be in writing to the Coordinator and shall identify the records containing the classified information of interest. A former President or Vice President may also request approval for a research associate, but there is no entitlement to such enlargement of access and the decision in this regard shall be in the sole discretion of the Senior Agency Official

§ 1909.6 Designation of authority to waive need-to-know and grant historical access requests.

(a) *The Agency Release Panel (ARP)* is designated to review requests and shall issue a recommendation to the Senior Agency Official who shall issue the final CIA decision whether or not to waive the need-to-know and grant requests for access by historical researchers, by former Presidential and Vice Presidential appointees and designees, or by former Presidents and Vice Presidents under Executive Order 13526 (or successor Orders) and these regulations.

(b) *ARP Membership.* The ARP is chaired by the Director, Information Management Services and composed of the Chief, Information Review and Release Group, the Chief, Classification Management Program Office, the Information Review Officers from the various Directorates and the DCIA area, as well as the representatives of the various release programs and offices within CIA. The Information and Privacy Coordinator also serves as Executive Secretary of the ARP.

§ 1909.7 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days make a record of each request for access received under this part, acknowledge receipt to the requester in writing, and take the following actions:

(a) *Compliance with general requirements.* The Coordinator shall review each request under this part and determine whether it meets the general requirements as set forth in § 1909.5 and notify the requester that the request has been accepted for consideration if it does. If it does not, the Coordinator shall so notify the requester and explain the basis for this decision and any steps that can be taken to perfect the request.

(b) *Action on requests meeting general requirements.* For requests which meet the requirements of § 1909.5, the Coordinator shall thereafter task the Director, Center for the Study of Intelligence, the originator(s) of the information for which access is sought, and other interested parties to review the request and provide their input concerning whether or not the required determinations set forth in § 1909.8 can be made. Additional taskings may be directed as required during the review process.

§ 1909.8 Determinations on requests for access by former Presidents and Vice Presidents, former Presidential and Vice Presidential appointees or designees, and historical researchers.

(a) *Required determinations for former Presidents and Vice Presidents.* In order to recommend approval of an access request made by a former President or Vice President, the ARP must make the following determinations in writing:

(1) That the access is consistent with the interest of national security;

(2) That a nondisclosure agreement has been or will be executed by the requester and other appropriate steps are taken to assure that classified information will not be disclosed or otherwise compromised;

(3) That a CIA prepublication review agreement has been or will be executed by the requester which provides for a review of notes and any resulting manuscript; and,

(4) That appropriate steps can be taken to ensure that the information is safeguarded in a manner consistent with Executive Order 13526.

(b) *Required determinations for former Presidential and Vice Presidential appointees or designees.* In order to recommend approval of an access request made by a former Presidential or Vice Presidential appointee or designee, the ARP must make the following determinations in writing:

(1) That the requester has previously occupied a senior policy-making position to which the requester was appointed or designated by the President or Vice President;

(2) That the access is consistent with the interest of national security;

(3) That a nondisclosure agreement has been or will be executed by the requester and other appropriate steps are taken to assure that classified information will not be disclosed or otherwise compromised;

(4) That a CIA prepublication review agreement has been or will be executed by the requester which provides for a review of notes and any resulting manuscript;

(5) That appropriate steps can be taken to ensure that the information is safeguarded in a manner consistent with Executive Order 13526; and,

(6) That access will be limited to items that the person originated, reviewed, signed, or received while serving as a Presidential or Vice Presidential appointee or designee.

(c) *Required determinations for a research associate of a former President or Vice President, or of a former Presidential or Vice Presidential appointee or designee.* In order to recommend approval of a request for historical access by a research associate, the ARP must make the following determinations in writing:

(1) That the requester has been selected as a research associate of a former President or Vice President, or of a Presidential or Vice Presidential appointee or designee;

(2) That the access is consistent with the interest of national security, and one factor in that determination is that an appropriate security check has been conducted and a security clearance or access has been issued by an appropriate U.S. Government agency;

(3) That a nondisclosure agreement has been or will be executed by the requester and other appropriate steps are taken to assure that classified information will not be disclosed or otherwise compromised;

(4) That a CIA prepublication review agreement has been or will be executed by the requester which provides for a review of notes and any resulting manuscript;

(5) That appropriate steps can be taken to ensure that the information is safeguarded in a manner consistent with Executive Order 13526; and,

(6) That, in the case of a former Presidential or Vice Presidential appointee or designee, access by the research associate will be limited to items that the Presidential or Vice Presidential appointee or designee who selected the research associate originated, reviewed, signed, or received while serving as a Presidential or Vice Presidential appointee or designee.

(d) *Required determinations for a historical researcher (other than a research associate).* In order to recommend approval of an access request made by a historical researcher (other than a research associate to which paragraph (c) of this section applies) the ARP must make the following determinations in writing:

(1) That a serious professional or scholarly research project by the requester is contemplated;

(2) That the access is consistent with the interest of national security, and one factor in that determination is that an appropriate security check has been conducted and a security clearance or access has been issued by an appropriate U.S. Government agency;

(3) That a nondisclosure agreement has been or will be executed by the requester, and other appropriate steps are taken to assure that classified information will not be disclosed or otherwise compromised;

(4) That a CIA prepublication review agreement has been or will be executed by the requester, which provides for a review of notes and any resulting manuscript;

(5) That the information requested is reasonably accessible and can be located and compiled with a reasonable effort;

(6) That it is reasonably expected that substantial and substantive Government documents and/or information will be amenable to declassification and release and/or publication;

(7) That sufficient resources are available for the administrative support of the historical researcher given current requirements; and,

(8) That the request cannot be satisfied to the same extent through requests for access to reasonably described records under the Freedom of Information Act or the Mandatory Declassification Review provisions of Executive Order 13526.

§ 1909.9 Action by the ARP.

The ARP shall meet on a regular schedule and may take action when a simple majority of the total membership is present. A recommendation to the Senior Agency Official concerning whether or not to grant requests for access to classified CIA information by former Presidents or Vice Presidents, by former Presidential or Vice Presidential appointees or designees, or by historical researchers shall be made by a majority vote of the members present.

§ 1909.10 Final CIA decision.

(a) Upon receipt of a recommendation by the ARP concerning whether or not to grant access to classified CIA information under this part, the Senior Agency Official may, in his sole discretion, waive the need-to-know requirement and approve such access only if he or she:

(1) Determines in writing that access is consistent with the interests of national security;

(2) Takes appropriate steps to protect classified information from

unauthorized disclosure or compromise and ensures that the information is safeguarded in a manner consistent with Executive Order 13526; and,

(3) Limits any access granted to former Presidential or Vice Presidential appointees and designees (or any research associate they select) to the items that the former Presidential or Vice Presidential appointee or designee originated, reviewed, signed, or received while serving in that capacity.

(b) The Director of the Central Intelligence Agency reserves the authority to make a superseding decision concerning whether or not to waive the need-to-know requirement and to grant access to classified CIA information under this part in any case only if he or she:

(1) Determines in writing that access is consistent with the interests of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with Executive Order 13526; and,

(3) Limits any historical access granted to former Presidential or Vice Presidential appointees and designees (or any research associate they select) to the items that the former Presidential or Vice Presidential appointee or designee originated, reviewed, signed, or received while serving in that capacity.

(c) The Senior Agency Official also may make a determination that a successive request for historical access falls within the scope of an earlier waiver of the "need-to-know" criterion under section 4.4 of the Order, so long as the extant waiver is no more than two years old.

§ 1909.11 Notification of decision.

The Executive Secretary shall inform the requester of the final CIA decision and, if favorable, shall manage the access for such period of time as deemed required, but in no event for more than two years unless renewed by the Senior Agency Official, in accordance with the requirements of this part for waiving need-to-know and granting access in the first instance.

§ 1909.12 Termination of access.

The Coordinator shall cancel any authorization and deny any further access whenever the Director of Security cancels the security clearance of any person who has been granted access to classified CIA information under the part; or whenever the Senior Agency Official, or the Director of the Central Intelligence Agency, determines that continued access would no longer be consistent with the requirements of this part; or at the conclusion of the authorized period of up to two years if there is no renewal under § 1909.11.

Dated: August 30, 2016.

Joseph W. Lambert,

Director, Information Management Services.

[FR Doc. 2016–21825 Filed 9–16–16; 8:45 am]

BILLING CODE 6310–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2016–0790]

RIN 1625–AA87

Security Zone; 22nd International Seapower Symposium, Goat Island, Newport, RI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone along the western shore of Goat Island, Newport, Rhode Island, including the vicinity of Newport Harbor Light at the northeastern point of Goat Island to and around the Goat Island Connector between Goat Island and Newport, Rhode Island, in conjunction with the 22nd International Seapower Symposium. Entry into this zone by any vessel or persons is prohibited unless specifically authorized by the Captain of the Port (COTP), Southeastern New England or the COTP's designated on-scene representative.

DATES: This rule is effective without actual notice from September 19, 2016 until September 23, 2016. For the purposes of enforcement, actual notice will be used from September 18, 2016 until September 19, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0790 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Mr. Edward G. LeBlanc at Sector Southeastern New England; telephone (401) 435–2351, email *Edward.G.LeBlanc@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Acronyms

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
TFR	Temporary Final Rule
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule. Because of the sensitive security issues related to these special events, the Coast Guard was not aware of the final details with sufficient time to solicit public comments. Thus, waiting for a full comment period to run would inhibit the Coast Guard's ability to keep senior military leaders and government officials, along with the general public, safe from subversive acts directed at these high visibility special events. Providing a prolonged public notice and comment period is contrary to the public interest due to national security concerns.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this temporary rule's effective date would be contrary to the public interest given the immediate need to ensure the safety and security of event attendees.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231; which authorizes the Coast Guard to define Security Zones.

This action is intended to temporarily prohibit vessel traffic from transiting within 250 yards of the western shore of Goat Island and within a 250 yard radius of Newport Harbor Light at the northeastern point of Goat Island and extending to 250 yards on either side of the Goat Island Connector between Goat Island and Newport, Rhode Island, to ensure the security of attendees to the 22nd International Seapower Symposium by properly safeguarding against potential sabotage, subversive acts, or other threats.

IV. Discussion of Comments, Changes, and the Rule

The 22nd International Seapower Symposium is being held on Goat Island, Newport, RI, from September 18 through September 23, 2016. High level U.S. officials and delegates from over 125 countries are expected to attend. Goat Island, the site of the 22nd International Seapower Symposium, is waterfront property in Newport, Rhode Island, within the Captain of the Port, Southeastern New England zone.

This rule establishes a temporary 250-yard security zone in the navigable waters adjacent to the western shore of Goat Island and in the vicinity of Newport Harbor Light at the northeastern point of Goat Island and extending to 250 yards on either side of the Goat Island Connector between Goat Island and Newport, Rhode Island, where the 22nd International Seapower Symposium is being held from September 18 through September 23, 2016. Vessels and persons will be prohibited from entering this security zone during the 22nd International Seapower Symposium. The perimeter of the security zone along the western shore and northeast point of Goat Island will be clearly marked by six special purpose white buoys with orange stripes. It has been determined that the necessary security enhancements provided by this rule greatly outweigh any potential negative impacts. Public notifications will be made prior to and during the entire effective period of this security zone via marine information broadcasts and local notice to mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders relating to rulemaking. Below we summarize our analyses based on these statutes and executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration of the event. The effect of this rule will be small, as the duration of the security zone is for only six days. Additionally, vessels may be permitted to transit and navigate in waters adjacent to this security zone, minimizing any adverse impact. Maritime advisories will be broadcast. The Coast Guard anticipates negligible negative impact on vessel traffic from this temporary security zone. It will be in effect for only six days and will only affect waters adjacent to the western shore, northeast end of Goat Island, and the Goat Island Connector where there are no major channels, slips, marinas, or other waterfront facilities for recreational or commercial traffic. Additionally, the security zone is in effect in mid- to late-September when there is reduced vessel activity in the vicinity of Goat Island and vessels can transit safely around the security zone and in all other waters of Newport Harbor.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule does not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary 250-yard security zone in the navigable waters in the vicinity of Newport Harbor in conjunction with the 22nd International Seapower Symposium. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. An environmental analysis checklist and Categorical Exclusion Determination will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–0790 to read as follows:

§ 165.T01–0790 Security Zone: Goat Island, Newport, Rhode Island.

(a) *Location.* The following area is a security zone: All navigable waters, from surface to bottom, within 250 yards of the western shore of Goat Island, Newport, Rhode Island, marked at its southern boundary by Goat Island Southwest Buoy "1" (U.S. Coast Guard Light List No. 17825) in approximate position 41°28′56.869″ N., 71°19′45.865″ W., and extending north parallel to the western shore to where it meets and includes an arc extending in a 250 yard radius around Newport Harbor Light (U.S. Coast Guard Light List No. 17850) at position 41°29′36.000″ N., 071°19′37.800″ W. and extends to and includes waters within 250 yards on either side of the Goat Island Connector between Goat Island and Newport, Rhode Island.

(b) *Effective and enforcement period.* This rule will be effective and enforced from 8:00 a.m. on September 18, 2016 to 8:00 p.m. on September 23, 2016.

(c) *Definitions.* The following definitions apply to this section: "Designated on-scene patrol personnel" means any commissioned, warrant and petty officers of the Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port, Southeastern New England.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.33 apply.

(2) In accordance with the general regulations in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Southeastern New England.

(3) All persons and vessels shall comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel.

(4) Upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Persons and vessels may request permission to enter the zone on VHF–16.

Dated: August 31, 2016.

J.A. Smith,

Commander, U.S. Coast Guard, Acting Captain of the Port, Southeastern New England.

[FR Doc. 2016–22464 Filed 9–16–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2016–0813]

RIN 1625–AA87

Security Zone; 22nd International Seapower Symposium Special Events, Rosecliff Mansion and Newport Marriott Hotel, Newport, RI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary 500-yard security zone on the waters adjacent to Rosecliff Mansion and the Newport Marriott Hotel, in Newport, Rhode Island, in conjunction with special events of the U.S. Navy's 22nd International Seapower Symposium. Vessels and people are prohibited from entering these security zones.

DATES: This rule is effective from 4 p.m. on September 20, 2016 through 11:30 p.m. on September 22, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0813 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Mr. Edward G. LeBlanc at Sector Southeastern New England, telephone (401) 435–2351, email *Edward.G.LeBlanc@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Acronyms

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
TFR Temporary Final Rule
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule. Because of the sensitive security issues related to these special events, the Coast Guard was not aware of the final details with sufficient time to solicit public comments. Thus, waiting for a full comment period to run would inhibit the Coast Guard's ability to keep senior military leaders and government officials, along with the general public, safe from subversive acts directed at these high visibility special events. Providing a prolonged public notice and comment period is contrary to the public interest due to national security concerns.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, delaying the effective date of this rule would be contrary to the public interest.

III. Legal Authority and Need for Rule

The legal authority for this rule is 33 U.S.C. 1231 which authorizes the Coast Guard to define Security Zones.

The 22nd International Seapower Symposium is being held on Goat Island, Newport, RI, from September 18 to September 23, 2016. High level U.S. officials and delegates from over 125 countries are expected to attend. As part of the Symposium, special events are being held on the evenings of Tuesday, September 20 and Thursday, September 22, 2016, at Rosecliff Mansion and the Newport Marriott Hotel, respectively, which are waterfront properties in Newport, Rhode Island, and within the COTP, Southeastern New England zone. The COTP has determined that it is necessary to temporarily prohibit vessel traffic from transiting within 500 yards of Rosecliff Mansion (approximate position 41°-27′54″ N., 071°-18′18″ W.) and the Newport Marriott Hotel (approximate position 41°-29′23″ N., 071°-19′04″ W.), Newport, RI, to safeguard the symposium attendees against potential sabotage, subversive acts, or other threats.

IV. Discussion of the Rule

For the reasons discussed above, this rule establishes temporary 500-yard security zones in the navigable waters adjacent to Rosecliff Mansion (approximate position 41°-27′54″ N., 071°-18′18″ W.) and the Newport Marriott Hotel (approximate position 41°-29′23″ N., 071°-19′04″ W.) respectively, in Newport, Rhode Island. These security zones will be effective and enforced at Rosecliff Mansion and the Newport Marriott Hotel from 4 p.m. to 11:30 p.m. on Tuesday, September 20 and Thursday, September 22, 2016, respectively. Vessels and persons will be prohibited from entering these security zones during this time.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

The Coast Guard expects the economic impact of this rule to be minimal, such that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this rule will be small, as the duration of the security zones is for only seven and a half hours on two separate evenings. Additionally, vessels may be permitted to transit and navigate in waters adjacent to this security zones, minimizing any adverse impact. Maritime advisories will be broadcasted.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zones may be small entities, for the reasons stated in section V.A above this rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule does not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of temporary security zones for special events being held in conjunction with the 22nd International Seapower Symposium. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. An environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–0813 to read as follows:

§ 165.T01–0813 Security Zones: Rosecliff Mansion and Newport Marriott Hotel, Newport, Rhode Island.

(a) *Location.* The following areas are security zones: All navigable waters, from surface to bottom, within 500 yards of Rosecliff Mansion (approximate position 41° − 27′54″ N., 071° − 18′18″ W.) and the Newport Marriott Hotel (approximate position 41° − 29′23″ N., 071° − 19′04″ W.), Newport, Rhode Island.

(b) *Effective and enforcement period.* This rule will be effective and enforced from 4 p.m. to 11:30 p.m. on Tuesday, September 20, 2016 at Rosecliff Mansion, and from 4 p.m. to 11:30 p.m. on Thursday, September 22, 2016, at the Newport Marriott Hotel.

(c) *Definitions.* The following definitions apply to this section: “Designated on-scene patrol personnel” means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port, Southeastern New England.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.30 and 165.33 apply.

(2) In accordance with the general regulations in 33 CFR 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port, Southeastern New England.

(3) Any vessel permitted to enter these security zones shall comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Persons and vessels may request permission to enter the zone on VHF–16.

Dated: August 31, 2016.

J.A. Smith,

Commander, U.S. Coast Guard, Acting Captain of the Port, Southeastern New England.

[FR Doc. 2016–22463 Filed 9–16–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0389; FRL–9952–41–Region 2]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; NJ; Infrastructure SIP Requirements for 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, and 2012 $PM_{2.5}$, 2006 PM_{10} and 2011 Carbon Monoxide NAAQS: Interstate Transport Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving elements of a New Jersey State Implementation Plan (SIP) submittal pertaining to the infrastructure requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide (NO_2), 2010 Sulfur Dioxide (SO_2), 2011 Carbon Monoxide (CO), 2006 Particulate Matter of ten microns or less (PM_{10}), and 2012 Particulate Matter of 2.5 microns or less ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA. This action pertains specifically to infrastructure requirements relating to interstate transport provisions concerning the Prevention of Significant Deterioration of Air Quality (PSD) regulations, and visibility protection.

DATES: This rule is effective on October 19, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2016–0389. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, 212–637–3702, *fradkin.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we'', ''us'', and ''our'' means EPA.

I. Background and Purpose
II. What action is EPA taking?
III. Statutory and Executive Order Reviews

I. Background and Purpose

This rulemaking addresses CAA section 110(a)(2)(D)(i) requirements in New Jersey's infrastructure SIP submitted on October 17, 2014 to address applicable infrastructure requirements with respect to the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$, 2006 PM_{10} and 2011 CO NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address. EPA commonly refers to such state plans as ''infrastructure SIPs.'' In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS (commonly referred to as prong 1), or interfering with maintenance of the NAAQS (prong 2), in any another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality (prong 3) and to protect visibility (prong 4) in another state.

This rulemaking pertains only to the portion of the SIP submittal addressing section 110(a)(2)(D)(i)(II)(prongs 3 and 4). On March 30, 2016, New Jersey withdrew the portion of the submittal addressing 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2008 Ozone NAAQS. EPA subsequently issued a Finding of Failure to Submit to New Jersey.[1] EPA will address the other portions of the October 17, 2014 infrastructure SIP submittal in a separate action.

EPA proposed action on the October 17, 2014 submittal on July 27, 2016 (81 FR 49205). In that action, EPA proposed to disapprove the portions of New Jersey's October 17, 2014 SIP submission addressing prong 3 and proposed to approve the portions addressing prong 4 regarding CAA section 110(a)(2)(D)(i) requirements. No comments were received on the proposal. The reader is referred to the July 27, 2016 proposed rulemaking for a detailed discussion of New Jersey's submittal and EPA's review and proposed actions.

II. What action is EPA taking?

EPA is approving the portion of the October 17, 2014 SIP submittal from New Jersey pertaining to the requirements of CAA section 110(a)(2)(D)(i)(II) requirement for visibility (or prong 4) for the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, and 2012 p.m.2.5, 2006 p.m.$_{10}$ and 2011 CO NAAQS.

New Jersey has elected to comply with the Federal PSD requirements by accepting delegation of the Federal rules and has been successfully implementing this program for many years. However, EPA does not recognize a delegated PSD program as satisfying the Infrastructure SIP requirements. Therefore, EPA is disapproving New Jersey's submittal pertaining to the requirements of CAA section 110(a)(2)(D)(i)(II) requirement for PSD (or prong 3) for the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$, 2006 p.m.$_{10}$ and 2011 CO NAAQS. However, the disapprovals will not trigger any sanctions or additional Federal Implementation Plan obligation since a PSD Federal Implementation Plan is already in place.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This final action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This final action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This rule does not impose any requirements or create impacts on small entities. This partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply approves and disapproves certain state requirements for inclusion into the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely partially approves and partially disapproves a SIP submittal from the State of New Jersey.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

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[1] 81 FR 38963 (June 15, 2016).

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. This action merely partially approves and partially disapproves a SIP submittal from the State of New Jersey.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 6, 2016.

Judith A. Enck,

Regional Administrator, Region 2.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

■ 2. Section 52.1586 is amended by adding paragraph (b) and adding and reserving paragraph (c) to read as follows:

§ 52.1586 Section 110(a)(2) infrastructure requirements.

* * * * *

(b) *2008 Lead, 2008 8-hour ozone, 2010 NO_2, 2010 SO_2, 2012 $PM_{2.5}$, 2006 PM_{10} and 2011 CO NAAQS*—(1) *Approval.* Submittal from New Jersey dated October 17, 2014 to address the CAA infrastructure requirements of section 110(a)(2) for the 2008 Lead, 2008 8-hour ozone, 2010 NO_2, 2010 SO_2, 2012 $PM_{2.5}$, 2006 PM_{10} and 2011 CO NAAQS is approved for (D)(i)(II) prong 4 (visibility).

(2) *Disapproval.* Submittal from New Jersey dated October 17, 2014 to address the CAA infrastructure requirements of section 110(a)(2) for the 2008 Lead, 2008 8-hour ozone, 2010 NO_2, 2010 SO_2, 2012 $PM_{2.5}$, 2006 PM_{10} and 2011 CO NAAQS is disapproved for (D)(i)(II) prong 3 (PSD program only). These requirements are being addressed by § 52.1603 which has been delegated to New Jersey to implement.

(c) [Reserved]

[FR Doc. 2016–22400 Filed 9–16–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0824; FRL–9952–42–Region 5]

Air Plan Approval; Ohio; Infrastructure SIP Requirements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of the state implementation plan (SIP) submission from Ohio regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The proposed rule associated with this final action was published on June 23, 2016, and we received no comments.

DATES: This final rule is effective on October 19, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2015–0824. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Joseph Ko, Environmental Engineer, at (312) 886–7947 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Joseph Ko, Environmental Engineer, Attainment Planning and Maintenance, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7947, *ko.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What did Ohio submit, and what is the scope of EPA's action?
II. What action is EPA taking?
III. Statutory and Executive Order Reviews

I. What did Ohio submit, and what is the scope of EPA's action?

A. What state SIP submission does this rulemaking address?

This rulemaking addresses a submission from the Ohio Environmental Protection Agency (OEPA), describing its infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS, dated December 4, 2015.

B. Why did the state make this SIP submission?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2012 $PM_{2.5}$ NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2007 Memo) and has issued additional guidance documents, the most recent on September 13, 2013, "Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and (2)" (2013 Memo). The SIP submission referenced in this rulemaking pertains to the applicable requirements of section 110(a)(1) and (2), and addresses the 2012 $PM_{2.5}$ NAAQS. To the extent that the prevention of significant deterioration (PSD) program is non-NAAQS specific, a narrow evaluation of other aspects of Ohio's submittal pertinent to the NAAQS will be included in the appropriate sections.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submission from OEPA that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type is in CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

This rulemaking will not cover four substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"); (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final New Source Review (NSR) Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"); and (iv) transport provisions under section 110(a)(2)(D). Instead, EPA has the authority to, and plans to, address each one of these substantive areas in separate rulemakings. A detailed history and interpretation of infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" (*see* 79 FR 27241 at 27242—27245).

II. What action is EPA taking?

EPA is approving most elements of the submission from OEPA certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2012 $PM_{2.5}$ NAAQS. The proposed rulemaking associated with this final action was published on June 23, 2016 (81 FR 40827), and EPA received no comments during the comment period, which ended on July 25, 2016. For the reasons discussed in the proposed rulemaking, EPA is therefore taking final action to approve most elements, as proposed, of Ohio's submissions. EPA's final actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

Element	2012 $PM_{2.5}$
(A): Emission limits and other control measures.	A
(B): Ambient air quality monitoring and data system.	A
(C): Program for enforcement of control measures.	A
(D) 1: Interstate Transport—Significant contribution.	NA
(D) 2: Interstate Transport—interfere with maintenance.	NA
(D) 3: PSD	A
(D) 4: Visibility	NA
(D) 5: Interstate and International Pollution Abatement.	A
(E): Adequate resources	A
(E): State boards	A
(F): Stationary source monitoring system.	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D.	+
(J) 1: Consultation with government officials.	A
(J) 2: Public notification	A
(J) 3: PSD	A
(J) 4: Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities.	A

In the above table, the key is as follows:
A Approve.
NA No Action/Separate Rulemaking.
+ Not germane to infrastructure SIPs.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 30, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.1870, the table in paragraph (e) is amended by adding an entry for "Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS" after the entry "Section 110(a)(2) infrastructure requirements for the 2006 $PM_{2.5}$ NAAQS" under "Infrastructure Requirements" to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
* * * * * * *				
Infrastructure Requirements				
* * * * * * *				
Section 110(a)(2) infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS.	Statewide	12/2/2015	9/19/2016, [Insert **Federal Register** citation].	Addresses the following CAA elements: 110(a)(2)(A)–(C), (D)(iii), (D)(v), (E)–(H), (J)(i), (J)(ii), (J)(iii), (K)–(M).
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[FR Doc. 2016–22360 Filed 9–16–16; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 81, No. 181
Monday, September 19, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AG68

Small Business Investment Companies (SBIC); Early Stage Initiative

AGENCY: U.S. Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this proposed rule, SBA is making changes to its Early Stage Small Business Investment Company (SBIC) initiative, which was launched in 2012 as a 5-year effort as part of President Obama's Startup America Initiative. The intent of the initiative was to license and provide SBA-guaranteed leverage to Early Stage SBICs that would focus on making investments in early stage small businesses. Although 62 investment funds applied to the program, few satisfied SBA's licensing criteria. To date, SBA has only licensed five Early Stage SBICs. In an attempt to attract more qualified early stage fund managers, this rule proposes changes to the initiative with respect to licensing, non-SBA borrowing, and leverage eligibility. These proposed changes are based in part on feedback SBA received on an Advance Notice of Proposed Rulemaking (ANPRM) that was published in March 2015. In addition, this rule reflects SBA's intention to continue licensing and providing SBA-guaranteed leverage to Early Stage SBICs beyond the 5-year term of the initiative, and proposes certain technical changes to SBA's Early Stage regulations.

DATES: Comments on the proposed rule must be received on or before October 19, 2016.

ADDRESSES: You may submit comments, identified by RIN 3245–AG68, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail, Hand Delivery/Courier: Mark Walsh, Associate Administrator for the Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Theresa Jamerson, Office of Investment and Innovation, 409 Third Street SW., Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make the final determination of whether or not it will publish the information.

FOR FURTHER INFORMATION CONTACT: Theresa Jamerson, Office of Investment and Innovation, (202) 205–7563.

SUPPLEMENTARY INFORMATION:

I. Public Participation

SBA invites comments, data, and information from all interested parties, including but not limited to investors, small businesses, advocacy groups, nongovernmental organizations, and legal representatives with relevant expertise on any and all aspects of this proposed rule. Comments that will provide the most assistance to SBA in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authorities that support such recommended change. SBA is generally seeking comments on:

A. Proposed licensing requirements for Early Stage SBICs;

B. Proposed evaluation of Early Stage SBICs by SBA;

C. Proposed treatment of third-party debt of Early Stage SBICs;

D. Proposed maximum amount of leverage for Early Stage SBICs, both individually and annually in aggregate;

E. Constraints of equity versus debenture financing as articulated in the proposed rule;

F. Treatment of interest reserve, capital impairment, and cost of money in the proposed rule;

G. Alternative financing terms compared with those in the proposed rule, such as discounted debentures and longer-maturity debentures;

H. Access by non-leveraged SBICs to Early Stage SBIC leverage under the proposed rule;

I. Alignment of the proposed rule with early stage investment strategies, including the relatively long time horizons of early-stage investors in capital-intensive technologies; and

J. Other suggested changes that SBA has not included in this proposal.

SBA also invites comments on the economic and financial analyses supporting this rule.

II. Background Information

In the Small Business Investment Act of 1958 (Act), Congress created the Small Business Investment Company (SBIC) program to "stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply . . . ." 15 U.S.C. 661. Congress intended that the program "be carried out in such manner as to insure the maximum participation of private financing sources." *Id.* In accordance with that policy, the U.S. Small Business Administration (SBA) does not invest directly in small businesses. Rather, through the SBIC program, SBA licenses and provides debenture leverage to SBICs. SBICs are privately-owned and professionally managed for-profit investment funds that make loans to, and investments in, qualified small businesses using a combination of privately raised capital and debenture leverage guaranteed by SBA. SBA will guarantee the repayment of debentures issued by an SBIC (Debentures) based on the amount of qualifying private capital raised by an SBIC up to a maximum amount of $150 million.

The standard Debenture requires semi-annual interest payments. Consequently, most SBICs finance later stage small businesses with positive operating cash flow, and most structure their investments as loans or mezzanine debt in an amount that is at least sufficient to cover the SBIC's Debenture interest payments. Early stage companies typically do not have positive operating cash flow and therefore cannot make current interest or dividend payments. As a result, investments in early stage companies do not fit naturally with the structure of debenture leverage.

Early stage businesses without the necessary assets or cash flow for traditional bank funding face difficult challenges accessing capital. As a result of this capital gap, and as part of President Obama's Startup America Initiative, on April 27, 2012, SBA published a final rule (77 FR 25042) to define a new sub-category of SBICs. SBA's intent was to license over a 5-year period (fiscal years 2012 through 2016) venture funds focused on early stage businesses. Because Early Stage SBICs present a higher credit risk than traditional SBICs, that rule authorized SBA to guarantee Debentures only in an amount equal to each Early Stage SBIC's Regulatory Capital (consisting of paid-in capital contributions from private investors plus binding capital commitments from Institutional Investors, as defined in existing § 107.50), up to a maximum guarantee amount of $50 million. SBA allocated $200 million per year ($1 billion total) of its SBIC Debenture authorization over these years to this effort.

Since 2012, SBA has received 62 applications to the Early Stage SBIC program, but licensed only five Early Stage SBICs. Those applicants that were not licensed failed to meet SBA's licensing criteria. Many of these applicants had management teams with limited track records and few positive realizations. In order to determine the market need for SBA to continue licensing Early Stage SBICs past fiscal year 2016, SBA sought input from the public through an Advance Notice of Proposed Rule Making (ANPRM) on March 18, 2015 (80 FR 14034). In the ANPRM, SBA also sought input regarding what changes should be made to the program to attract qualified early stage fund managers.

Comments on the ANPRM and additional discussions SBA held with industry participants indicated that the program should be continued because funding gaps, especially in certain geographic areas and industries, continue to pose challenges for early stage businesses. Based on SBA's analysis of the financing data available on the PricewaterhouseCoopers' Moneytree Web site (*www.pwcmoneytree.com*), although the venture capital industry provided over $81 billion in financings to U.S. businesses between January 2014 and June 2015, less than a third went to early stage or start-up businesses. Additionally, venture capital financings were geographically focused, with over three quarters of venture capital dollars going to three states: California, New York, and Massachusetts.

In comparison, based on financing data Early Stage SBICs reported in SBA Form 1031 (Portfolio Financing Report), Early Stage SBICs reported that over 69% of their financing dollars through September 2015 were invested in states other than California, New York, or Massachusetts. Also, Early Stage SBICs reported that investments they have made in early stage small businesses have resulted in net job growth. SBA compared job data submitted by the existing Early Stage SBICs on SBA Form 1031 at the time of first financing to that submitted on SBA Form 468 (Annual Financial Report) for the reporting period as of December 31, 2014. This data indicated that Early Stage SBIC portfolio companies increased job growth on a net basis by 48% from the date of initial Early Stage SBIC investment through the reporting period.

SBA received suggestions for program improvement both through the ANPRM and discussions with industry. This proposed rule incorporates some of those suggested changes.

III. Section by Section Analysis

Section 107.310—When and How To Apply for Licensing as an Early Stage SBIC

The proposed rule would remove § 107.310 in its entirety. The current regulation sets forth two restrictions specific to the licensing of Early Stage SBICs. First, Early Stage SBIC applications may be submitted only during a limited timeframe identified in a Notice published in the **Federal Register** (which SBA has published on an annual basis since 2012). This restriction was put in place to enable SBA to manage the flow of applicants and properly allocate the $200 million annual Early Stage leverage among all successful applicants. Since the demand for Early Stage licenses from qualified fund managers has been well below capacity, the proposed rule would allow Early Stage applicants to apply at any time, similar to other SBIC applicants. SBA believes that if the demand for Early Stage licenses increases to such an extent that SBA becomes concerned about leverage availability, SBA will be able to manage the flow of applicants and leverage issued through § 107.320, an existing regulation that gives SBA the right to maintain diversification of Early Stage SBICs with respect to the year in which Early Stage SBICs commence operations.

The second restriction set forth in current § 107.310 states that SBA will not consider an application from an applicant under Common Control with an existing Early Stage SBIC that has outstanding Debentures or Debenture commitments. This requirement was put in place to promote fund manager diversification and because the short term duration of the original initiative would not have given existing Early Stage SBICs time to realize investments sufficiently to qualify for a subsequent fund. Since the proposed rule would make the initiative an ongoing part of the SBIC program, SBA is proposing to remove this restriction. SBA would review requests for subsequent Early Stage licenses similar to other SBIC subsequent license requests, by considering such factors as the existing SBIC's investment cycle, operating and regulatory history of the existing SBIC, anticipated co-investment between the proposed and existing SBIC, realizations since the existing SBIC was licensed, forecasted realizations and repayment of leverage, and consistency of management teams and limited partners between the existing SBIC and applicant.

One of SBA's strategic goals, as set forth in the FY2014–2018 Strategic Plan, is to ensure inclusive entrepreneurship by expanding access and opportunity to small businesses and entrepreneurs, including women, minorities, veterans and other entrepreneurs, in communities where market gaps remain. SBA encourages fund managers with early stage investment strategies that focus on these diverse communities to apply for licensing as an Early Stage SBIC.

Section 107.320—Evaluation of Early Stage SBICs

Current § 107.320 gives SBA the right to maintain diversification among Early Stage SBICs with respect to: (a) The year in which they commence operations, and (b) their geographic location. The proposed rule would clarify that diversification by geographic location would be with regard to where the fund would be investing rather than where the fund is located. Although SBA believes that Early Stage investors typically invest close to where they are located since they are often actively involved with their portfolio companies, this proposed change would clarify SBA's original intent.

Section 107.565—Restrictions on Third-Party Debt of Early Stage SBICs

Although current regulations allow standard SBICs to incur unsecured third party debt without SBA approval, current § 107.565 requires Early Stage SBICs to obtain prior SBA approval in order to have, incur or refinance any third party debt, whether secured or unsecured. This restriction was created because of the high risk profile of Early Stage SBICs. Even debt that is unsecured increases SBA's credit risk because SBA leverage is never senior to the claims of other unsecured creditors: Under § 107.560, the first $10 million of SBA leverage is generally subordinated to other unsecured debt of an SBIC, and leverage above $10 million is pari passu with other unsecured debt. Nonetheless, SBA recognizes that it is typical practice for investment funds, including those pursuing venture capital strategies, to use a line of credit to help bridge capital needs for financings—investment funds use lines of credit to fund financings and operations between capital calls, and can generally draw on a line of credit more quickly than investors pay in capital when called. To provide Early Stage SBICs access to this industry-standard tool while minimizing the credit risk to SBA, this proposed rule would allow current and future Early Stage SBICs to obtain an unsecured line of credit without SBA approval under the following conditions:

(1) *The line of credit is limited to the lesser of 20% of Regulatory Capital or total unfunded binding commitments from Institutional Investors minus any such commitments included in the Interest Reserve under § 107.1181.* Since the line of credit will be used to bridge private capital calls to enable an Early Stage SBIC to finance a small business, SBA believes that the line of credit should not exceed the maximum amount that may be invested into a single portfolio company. Existing § 107.740 calculates the maximum amount an SBIC may invest in a single portfolio company based on certain changes to an SBIC's Regulatory Capital, but this amount is generally 20% of Regulatory Capital. For simplicity, the proposed rule would set the borrowing limit to be no greater than 20% of Regulatory Capital as determined by the Capital Certificates submitted from time to time by the SBIC. Additionally, the line of credit should be no greater than the amount of capital available for call from investors. Early Stage SBICs use unfunded binding commitments from investors for three primary purposes: (1) To call capital to finance small businesses, (2) to call capital to fund operations, and (3) to fund the Interest Reserve required under § 107.1181. Since Early Stage SBICs cannot call unfunded commitments associated with the Interest Reserve (unless they are using that capital to pay interest on SBA-guaranteed leverage or SBA annual charges), the line of credit should be no greater than unfunded binding commitments from Institutional Investors minus any commitments associated with the Interest Reserve.

(2) *The term of the line of credit does not exceed 24 months.* Based on feedback from industry, SBA understands that most lines of credit are renewed on an annual basis. In this rule, SBA is proposing a 24 month limitation on the duration of the line of credit, which SBA believes should be sufficiently long so as to not impact the standard maturity dates in typical line of credit documentation. An Early Stage SBIC may renew the line of credit during its lifecycle as long as each renewal is no longer than 24 months and the Early Stage SBIC is in compliance with the requirements of this section.

(3) *The line of credit is held by a federally regulated financial institution.* SBA proposes this requirement, that the lender be regulated by a federal financial institutions regulator (*e.g.*, the FDIC, OCC, or NCUA) to ensure that the lender is creditworthy, that the credit terms are reasonable and customary, and that the lender will not seek unusual remedies in the event of a default.

(4) *All borrowings under the line of credit: (i) Are not secured third-party debt, as that term is defined under § 107.550(a); (ii) Are for the purpose of maintaining the Early Stage SBIC's operating liquidity or providing funds for a particular Financing of a Small Business; (iii) Must be fully repaid within 90 days after the date they are drawn; and (iv) Must be fully paid off for at least 30 consecutive days during the Early Stage SBIC's fiscal year.* SBA proposes these requirements to ensure that such debt is unsecured, since secured third party debt presents a higher credit risk to SBA and must be approved by SBA under § 107.550. Further, the third party debt must be solely for the purpose of maintaining the SBIC's operating liquidity or providing funds for a particular financing of a small business. Finally, since such borrowings are temporary in nature, the line of credit should be repaid quickly and not continuously refinanced. SBA believes these requirements are typical for a line of credit and would provide Early Stage SBICs with access to a standard industry tool while minimizing SBA's credit risk.

Section 107.1150 Maximum Amount of Leverage for a Section 301(c) Licensee

Current § 107.1150(c) limits Early Stage SBICs to SBA-guaranteed leverage and leverage commitments of 100 percent of Regulatory Capital or $50 million, whichever is less. Originally, the $50 million maximum was set in order to provide increased diversity to the Early Stage SBIC portfolio. Comments to the Early Stage ANPRM indicated that a higher maximum would be more attractive to experienced early stage fund managers and suggested either $75 million or $100 million as a maximum leverage ceiling. Given that SBA's goal is still to keep the overall amount of Early Stage leverage to $200 million in any given year, SBA believes that $75 million is responsive to the feedback SBA has received and is a more appropriate amount than $100 million to help achieve diversification within the Early Stage program. This proposed maximum would be available to future Early Stage SBICs as well as existing Early Stage SBICs.

The proposed rule would change the references to $50 million in both § 107.1150(c)(1) and § 107.1150(c)(3)(iii) to $75 million to reflect the increase in SBA-guaranteed leverage.

It should be noted that SBA's approval of leverage commitments to, and draws by, Early Stage SBIC applicants would remain subject to SBA credit policies and SBA's overall SBIC Debenture leverage authorization. Also, as discussed above, under existing § 107.320, SBA will also continue to maintain the right to require diversification among Early Stage SBICs by year and geography as part of the evaluation of Early Stage SBICs in the licensing process.

Compliance With Executive Orders 12866, 12988, 13132, 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this rule is a "significant" regulatory action under Executive Order 12866. The Regulatory Impact Analysis is set forth below.

1. Necessity of Regulation

As discussed above, early stage financing gaps remain, and SBA's Early Stage SBICs are financing these gaps and creating jobs. This proposed rule reflects SBA's intention to continue licensing and providing SBA-guaranteed leverage to Early Stage SBICs, and implements changes to improve the program and attract more qualified fund managers to continue to finance those gaps. Based on industry feedback, SBA believes that minor changes could improve the program without increasing credit risk to SBA. For example, removing the call process and accepting Early Stage SBIC applications on a rolling basis would allow fund managers to organize funds on their own timeline and allow fund managers to apply in a manner more conducive to their fundraising process. In addition, increasing the maximum leverage to $75 million would be more attractive to qualified managers that are able to raise higher amounts of capital and are seeking more capital to round out their fundraising. At the same time, maintaining a maximum one to one ratio of leverage to private capital would permit this increase to maximum leverage without increasing the risk to SBA. Moreover, allowing fund managers of existing Early Stage SBICs to apply for a subsequent license would help successful fund managers continue to fund early stage small businesses. Finally, allowing Early Stage SBICs to access a line of credit, similar to other venture funds and standard SBICs, would streamline Early Stage SBIC cash management and operations.

2. Alternative Approaches to Regulation

SBA considered making no changes to the Early Stage regulations and not issuing any further calls for Early Stage SBICs. However, based on industry feedback received through the ANPRM process, which is supported by industry statistics, gaps in the market place still remain for early stage financings. Because Early Stage SBICs are financing that gap and creating jobs, SBA decided to make the Early Stage program an ongoing part of the SBIC program and propose as part of this rule those changes suggested by industry that would not increase risk but would help to improve the program.

As part of the ANPRM process and discussions with industry, SBA received several suggested changes that the Agency either could not implement or chose not to implement primarily due to cost and risk. These include the following:

- *Implementing a true equity program.* Although SBA agrees that an early stage investment strategy would be more ideally funded with equity capital than the currently structured Debenture, SBA is not authorized by the Act to take equity positions in SBICs or make direct equity investments in small businesses. SBA has tried to provide for a leverage structure that balances risk/cost and usability by venture investors.
- *Lowering or removing the Interest Reserve.* Early Stage SBICs currently have access to a Debenture that requires quarterly interest payments throughout its term. Current § 107.1181 requires that for each Debenture that requires periodic interest payments to SBA during the first five years of its term, an Early Stage SBIC must maintain a reserve (consisting of either unfunded commitments from Institutional Investors or restricted cash in a segregated account) sufficient to pay the interest and annual charge on such Debenture for the first 21 payment dates following the date of issuance. SBA modeled both lowering the number of years required for the Interest Reserve and removing the Interest Reserve completely to identify the impact to the annual charge. The annual charge is an amount that SBA formulates each year and is paid by SBICs with outstanding leverage to offset projected SBIC Debenture losses and keep the Debenture program at zero subsidy cost. The Interest Reserve decreases SBA's credit risk for Early Stage SBICs; therefore, making the proposed changes to the Interest Reserve would have required all SBICs to pay a higher annual charge. SBA received input on these impacts from three of its five Early Stage SBICs, all of which preferred a lower annual charge rather than changes to the Interest Reserve. SBA therefore decided not to pursue this option.
- *Implementing an accruing Debenture with longer maturity.* In addition to the Debenture discussed above, Early Stage SBICs have access to a Debenture that is issued at a discount and does not require interest payments during the first five years of its term. In response to industry suggestions to modify the Debenture to align better with early stage cash flows, SBA considered creating a Debenture that would not be issued at a discount and would not require interest payments over a 10 or even 15 year period, but would accrue interest that would be payable at maturity. Evaluation of this instrument must take into account the fact that SBA's guarantee includes both the leverage principal and accrued interest. Using such a non-discounted accruing Debenture, if an Early Stage SBIC with $75 million in Regulatory Capital were to issue $75 million in Debentures, the $75 million in Debenture proceeds plus the accrued interest would exceed both the 1 tier of leverage maximum and $75 million maximum leverage guarantee amount for the Early Stage SBIC. If an SBIC issued Debentures at the full face amount of $75 million with interest accruing at a 5% rate and an annual charge of 1%, this would accrue in 5 years to over $100 million, in 10 years to over $134 million, and in 15 years to over $179 million. At the 15 year point, the maximum leverage guarantee would exceed the maximum leverage allowed by statute. In this scenario, the Debentures must be issued at a discount, and extending the 5-year discount to a 10 or 15 year timeframe would decrease the amount of proceeds the Early Stage SBIC would receive at time of issuance. For example, a Debenture that would accrue in five years to $1 million may provide an Early Stage SBIC with only $750,000 in proceeds, based on a 4% interest rate and a 1% annual charge. Increasing the accrual period to 10 years would reduce those proceeds to less than $600,000. At a higher interest rate, these Debenture proceeds would be reduced even further. SBA believes this would make the instrument less attractive.
- *Providing more flexibility with regard to capital impairment.* One of the ANPRM comments indicated that Early Stage SBICs should be provided with more flexibility in regard to capital impairment, the primary financial metric SBA uses to evaluate SBIC financial performance. Most Early Stage SBICs have a 70% maximum allowable capital impairment percentage (CIP). CIP measures the amount of operating and investment losses against an SBIC's Regulatory Capital. If an Early Stage SBIC exceeds its maximum CIP, after notifying the SBIC and giving the SBIC a cure period of at least 15 days, SBA may invoke the remedies identified in § 107.1810(g), which include, among other things, declaring the Debentures and any accrued interest immediately due and payable. SBA has decided not to modify the maximum allowable CIP for Early Stage SBICs because SBA generally experiences leverage losses with SBICs whose CIPs are in excess of 70%.

Furthermore, the existing Early Stage regulations already include adequate flexibility for Early Stage SBICs with respect to CIP. SBA previously operated a program that focused on equity investment called the Participating Securities program. That program generally allowed SBICs to have up to 85% maximum CIP in the first five years following the first issuance of leverage. In originally developing the Early Stage rule, SBA noted that SBA incurred leverage losses for most Participating Securities SBICs when the SBIC's CIP went over 85%. For the few Participating Securities SBICs that did fully repay SBA leverage, higher CIPs were often the result of the loss of "Class 2 Appreciation" on the SBIC's investments. Class 2 Appreciation, defined in § 107.1840(d)(3), relates to unrealized appreciation on securities that are non-public securities of a small business based on a new round of outside financing within the last 24 months. After 24 months, an SBIC's Class 2 Appreciation could "time out" and the SBIC would no longer receive credit for it in the CIP calculation.

Current § 107.1845 allows Early Stage SBICs to request approval to extend the validity of Class 2 Appreciation beyond 24 months based on relevant information, including a third party valuation. SBA believes this provision provides sufficient flexibility for Early Stage SBICs with respect to CIP while properly limiting SBA's credit risk.

- *Change cost of money rules for Early Stage SBICs.* Current § 107.855 generally limits the interest an SBIC may charge a small business on Debt Securities to 14 percent and Loans to 19 percent. SBA received comments that Early Stage SBICs should be allowed greater flexibility with cost of money provisions. SBA does not believe that such changes would significantly help Early Stage SBICs, which are primarily making equity investments that are not subject to the cost of money limitations.
- *Non-leveraged SBIC access to Early Stage leverage.* SBA received comments in response to the ANPRM stating that SBA should allow non-leveraged SBICs that have an early stage strategy to access Early Stage leverage. In the licensing process for non-leveraged applicants, SBA does not perform the same level of financial review that it does for applicants that intend to use leverage. A request of this type would require SBA to undertake a substantive review of the non-leveraged SBIC's qualifications that would, in many ways, be equivalent to a new license application. Moreover, nothing in SBA's regulations prevents a non-leveraged SBIC with an early stage focus from applying for the Early Stage SBIC program if that SBIC wishes to access Early Stage leverage. Therefore, SBA does not propose to implement this suggestion.
- *Increase the maximum leverage to $100 million.* Although SBA received comments that indicated the maximum leverage for Early Stage SBICs should be increased to $100 million, SBA was concerned that, based on its expected $200 million annual allocation of Early Stage leverage, this could concentrate the limited Early Stage allocation to only two funds per year. SBA therefore chose to propose a maximum leverage ceiling of only $75 million per year. SBA also considered only approving a higher maximum for new Early Stage SBIC applicants, but believes that existing Early Stage SBICs should be able to benefit from this increase.

3. Potential Benefits and Costs

The proposed rule reflects SBA's intent to continue licensing and providing SBA-guaranteed leverage to Early Stage SBICs, and would make material improvements to the program. Even though currently licensed Early Stage SBICs are eligible for almost $220 million in commitments, Early Stage SBICs have requested and been approved for less than $113 million in leverage commitments and have issued less than $44 million in Debentures through September 2015. Most venture funds have a 5-year investment period with follow-on financings in later years, so it is not unusual that these funds have not applied for or drawn all available leverage. SBA expects Early Stage SBICs to draw additional capital and leverage over a 5 to 7 year period to support financings and operational expenses, commensurate with this investment cycle. Despite the relatively small amount of leverage drawn, Early Stage SBICs have made over $94 million in financings to 46 small businesses through September 2015, with over half of the financing dollars reported in FY 2015. Since most Early Stage SBICs did not start reporting financings until 2014, and venture funds typically have a 5 year investment period, SBA expects funds to continue to make $50 to $75 million in financings per year for the next 2 to 3 years and then decline, unless new Early Stage SBICs are licensed.

As previously noted, the Early Stage program finances geographic funding gaps and creates jobs. Over 69% of Early Stage SBIC financing dollars went to states not in the traditional geographic hubs for venture capital financing. In addition, Early Stage SBIC financial reports filed with SBA for Early Stage SBICs' fiscal year 2014 showed a net gain in jobs of 48% in the small businesses Early Stage SBICs had invested in during 2014.

In terms of cost, since fiscal year 2012, the SBIC Debenture subsidy formulation model has taken into account Early Stage SBICs. Early Stage SBICs have a higher expected loss rate than standard SBICs, so the more leverage SBA allocates to Early Stage SBICs results in a proportionally higher annual charge. As noted in the April 27, 2012 final rule that established Early Stage SBICs (77 FR 25042), SBA allocated $150 million in leverage commitments (*i.e.*, 7% of SBA's total leverage authorization) to Early Stage SBICs for FY 2012. This allocation increased the FY 2012 annual charge for all SBICs by 13.7 basis points. For FY 2017, based on current demand, SBA has budgeted $100 million in Early Stage commitments (*i.e.*, 4% of SBA's total leverage authorization). SBA expects this allocation to increase the annual charge paid by all SBICs by less than 7 basis points, which is smaller than the increase to the annual charge related to the $200 million allocation for each of FYs 2012–2016. After FY 2017, SBA expects to allocate no more than approximately $200 million in leverage commitments to Early Stage SBICs in any year, which would keep the increase in cost related to the Early Stage program to no more than approximately 14 basis points. Depending on demand, Early Stage SBIC performance, and other factors, SBA may modify this targeted allocation. SBA believes that none of the changes proposed in this rule would alter the risk profile of the Early Stage SBICs or increase the annual charge paid by SBICs. The program will remain a zero subsidy program.

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or presumptive effect.

Executive Order 13132

The rule will not have substantial direct effects on the States, or the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, Federalism, SBA determines that this proposed rule has no federalism implications warranting the preparation of a federalism assessment.

Executive Order 13563

This proposed rule was developed based on comments received on the ANPRM SBA issued in March 2015 (80 FR 14034) and several discussions with Early Stage participants and others in the industry. SBA issued the ANPRM to solicit comments and ideas on the Early Stage SBIC program and considered each comment it received. The proposed changes are a result of those comments.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this rule proposes no additional reporting or recordkeeping requirements as defined by the Paperwork Reduction Act.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency promulgates a rule, the Regulatory Flexibility Act requires the agency to prepare an initial regulatory flexibility analysis (IRFA), which describes the potential economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the existing five Early Stage SBICs, as well as all potential applicants, all of which are small entities. Although SBA is seeking to expand the number of participants, because of the limited amount of available leverage, even with future growth, the number of affected small entities will still be relatively low. SBA has determined that the impact on entities affected by the rule will not be significant. Because SBA's subsidy model already takes into account Early Stage SBICs and the proposed rule does not impact the current annual fee needed to keep the Debenture program at a zero subsidy cost, no cost impacts are expected.

List of Subjects in 13 CFR Part 107

Examination fees, Investment companies, Loan programs-business, Licensing fees, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend part 107 of title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 15 U.S.C. 681, 683, 687(c), 687b, 687d, 687g, and 687m.

§ 107.310 [Removed and Reserved]

■ 2. Remove and reserve § 107.310.

■ 3. Revise § 107.320(b) to read as follows:

§ 107.320 Evaluation of Early Stage SBICs.

* * * * *

(b) The geographic location of projected investments based on the applicant's business plan.

■ 4. Revise § 107.565 to read as follows:

§ 107.565 Restrictions on third-party debt of Early Stage SBICs.

(a) *General.* If you are an Early Stage SBIC and you have outstanding Leverage or a Leverage commitment, you must get SBA's prior written approval to have, incur, or refinance any third-party debt other than accounts payable from routine business operations, unless such debt satisfies the conditions in paragraph (b) of this section.

(b) *Qualified line of credit.* Without obtaining SBA's prior written approval, an Early Stage SBICs may have, incur, or refinance third party debt that meets all of the following conditions:

(1) The third party debt is a line of credit with maximum availability limited to the lesser of:

(i) 20% of Regulatory Capital; or

(ii) Total unfunded binding commitments from Institutional Investors minus any such commitments used to fund the Interest Reserve under § 107.1181.

(2) The term of the line of credit does not exceed 24 months, but may be renewable, provided that each renewal does not exceed 24 months and you are in compliance with the conditions of this paragraph (b).

(3) The line of credit is held by a federally regulated financial institution.

(4) All borrowings under the line of credit:

(i) Are not secured third-party debt, as that term is defined in § 107.550(a);

(ii) Are for the purpose of maintaining your operating liquidity or providing funds for a particular Financing of a Small Business;

(iii) Must be fully repaid within 90 days after the date they are drawn; and

(iv) Must be fully paid off for at least 30 consecutive days during your fiscal year.

■ 5. Amend § 107.1150 by revising paragraphs (c)(1) and (c)(3)(ii), to read as follows:

§ 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

* * * * *

(c) * * *

(1) The total amount of any and all Leverage commitments you receive from SBA shall not exceed 100 percent of your highest Regulatory Capital or $75 million, whichever is less;

* * * * *

(3) * * *

(ii) $75 million.

* * * * *

Dated: August 26, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–21509 Filed 9–16–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9109; Directorate Identifier 2016–NM–011–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2013–23–02, for all Airbus Defense and Space S.A. Model CN–235, CN–235–100, CN–235–200, CN–235–300, and C–295 airplanes. AD 2013–23–02 currently requires an inspection of the feeder cables of certain fuel booster pumps for damage (including, but not limited to, signs of electrical arcing and fuel leaks), and replacement if necessary. Since we issued AD 2013–23–02, we have determined that a modification is necessary to address the identified unsafe condition. This proposed AD would retain the requirements of AD 2013–23–02 and would also require modification of the electrical installation of the fuel booster pumps. We are proposing this AD to prevent damage to certain fuel booster pumps, which could create an ignition source in the fuel tank vapor space, and result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by November 3, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact EADS CASA (Airbus Defense and Space), Services/Engineering Support, Avenida de

Aragón 404, 28022 Madrid, Spain; telephone: +34 91 585 55 84; fax: +34 91 585 31 27; email: *MTA.TechnicalService@Airbus.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9109; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1112; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9109; Directorate Identifier 2016–NM–011–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On October 31, 2013, we issued AD 2013–23–02, Amendment 39–17657 (78 FR 68688, November 15, 2013) ("AD 2013–23–02"). AD 2013–23–02 requires actions intended to address an unsafe condition on all Airbus Defense and Space S.A. Model CN–235, CN–235–100, CN–235–200, CN–235–300, and C–295 airplanes.

Since we issued AD 2013–23–02, we have determined that a modification of the fuel booster pump is necessary to address the identified unsafe condition.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0014, dated January 14, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Airbus Defense and Space S.A. Model CN–235, CN–235–100, CN–235–200, CN–235–300, and C–295 airplanes. The MCAI states:

> An occurrence with a CN–235 aeroplane was reported, involving an in-flight problem with the fuel transfer system. The results of the subsequent investigation revealed damage on the fuel booster pump electrical feeding cable and some burn marks on the pump body and plate (fairing) at the external side of the fuel tank; confirmed electrical arcing between the wire and pump body; and revealed fuel leakage onto the affected wire.
>
> This condition, if not detected and corrected, could create an ignition source in the fuel tank vapour space, possibly resulting in a fuel tank explosion and loss of the aeroplane.
>
> To address this potential unsafe condition, EADS CASA (Airbus Military) issued All Operators Letter (AOL) 235–025 and AOL 295–025, providing inspection instructions for the affected fuel booster pumps, Part Number (P/N) 1C12–34 and P/N 1C12–46.
>
> Consequently, EASA issued AD 2013–0186 [which corresponds to FAA AD 2013–23–02] to require a one-time [detailed visual] inspection of the affected fuel booster pumps to detect damage and, depending on findings, replacement of the fuel booster pump. That [EASA] AD also required reporting of all findings to EADS CASA for evaluation.
>
> Since that [EASA] AD was issued, Airbus Defence and Space (D&S) developed [a] modification of the fuel boost pump electrical installation, available for in-service application through Airbus D&S Service Bulletin (SB) 235–28–0023. That modification involves improved protection of the output of affected fuel pump harness avoiding undesired electrical contacts and preventing potential arcing between the affected harness and metallic parts of the fuel boost cover.
>
> For the reasons described above this [EASA] AD partially retains the requirements of EASA AD 2013–0186, which is superseded, and requires modification of the fuel pump electrical installation.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9109.

Related Service Information Under 1 CFR Part 51

EADS CASA has issued Airbus Defense and Space Service Bulletin SB–235–28–0023C, Revision 01, dated October 27, 2015. The service information describes procedures for modification of the fuel booster pumps. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Clarification of Affected Airplanes for Paragraph (i) of This AD

Paragraph (3) of the MCAI specifies a modification for all airplanes. However, the MCAI only specifies service information for Airbus Defense and Space S.A. Model CN–235, CN–235–100, CN–235–200, and CN–235–300 airplanes. We have determined that this modification only applies to Airbus Defense and Space S.A. Model CN–235, CN–235–100, CN–235–200, and CN–235–300 airplanes. Therefore, in paragraph (i) of this proposed AD we have identified Airbus Defense and Space S.A. Model CN–235, CN–235–100, CN–235–200, and CN–235–300 airplanes.

Costs of Compliance

We estimate that this proposed AD affects 35 airplanes of U.S. registry.

The actions required by AD 2013–23–02, and retained in this proposed AD take about 4 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2013–23–02 is $340 per product.

We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,802 per product. Based on these figures, we estimate the cost of this proposed AD on

U.S. operators to be $86,870, or $2,482 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $16,080, for a cost of $16,335 per product. We have no way of determining the number of aircraft that might need this action.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–23–02, Amendment 39–17657 (78 FR 68688, November 15, 2013), and adding the following new AD:

Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.): Docket No. FAA–2016–9109; Directorate Identifier 2016–NM–011–AD.

(a) Comments Due Date

We must receive comments by November 3, 2016.

(b) Affected ADs

This AD replaces AD 2013–23–02, Amendment 39–17657 (78 FR 68688, November 15, 2013) ("AD 2013–23–02").

(c) Applicability

This AD applies to Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.) Model CN–235, CN–235–100, CN–235–200, CN–235–300, and C–295 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a report of an in-flight problem with the fuel transfer system. We are issuing this AD to prevent damage to certain fuel booster pumps, which could create an ignition source in the fuel tank vapor space, and result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Inspection of the Feeder Cables of Certain Fuel Booster Pumps With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2013–23–02, with no changes. Within the times specified in paragraph (g)(1) or (g)(2) of this AD, as applicable: Perform a detailed visual inspection for damage (including, but not limited to, signs of electrical arcing and fuel leaks) of the electrical feeder cables of each fuel booster pump having part number (P/N) 1C12–34 or 1C12–46, in accordance with the instructions of Airbus Military All Operator Letter 235–025, dated July 29, 2013 (for Model CN–235 airplanes); or Airbus Military All Operator Letter 295–025, Revision 01, dated August 1, 2013 (for Model C–295 airplanes).

(1) For each fuel booster pump that has not been replaced as of December 2, 2013 (the effective date of AD 2013–23–02): Prior to the accumulation of 300 total flight hours or within 5 flight cycles after December 2, 2013, whichever occurs later.

(2) For each fuel booster pump that has been replaced as of December 2, 2013 (the effective date of AD 2013–23–02): Within 300 flight hours since the most recent fuel booster pump replacement, or within 5 flight cycles after December 2, 2013, whichever occurs later.

(h) Retained Replacement of Affected Fuel Boost Pumps With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2013–23–02, with no changes. If any damage (including, but not limited to, signs of electrical arcing and fuel leaks) is found during the inspection required by paragraph (g) of this AD: Within the time specified in paragraph (h)(1) or (h)(2) of this AD, replace the affected fuel booster pump with a serviceable pump, in accordance with Airbus Military All Operator Letter 235–025, dated July 29, 2013 (for Model CN–235 airplanes); or Airbus Military All Operator Letter 295–025, Revision 01, dated August 1, 2013 (for Model C–295 airplanes).

(1) Before further flight.

(2) Within 10 days following the inspection, provided that the airplane is operated under the conditions specified in Airbus Military All Operator Letter 235–025, dated July 29, 2013 (for Model CN–235 airplanes); or Airbus Military All Operator Letter 295–025, Revision 01, dated August 1, 2013 (for Model C–295 airplanes).

(i) New Requirement of This AD: Modification of the Fuel Booster Pumps

For Airbus Defense and Space S.A. Model CN–235, CN–235–100, CN–235–200, and CN–235–300 airplanes: Within 12 months after the effective date of this AD, modify the electrical installation of the fuel booster pumps, in accordance with the Accomplishment Instructions of Airbus Defense and Space Service Bulletin SB–235–28–0023C, Revision 01, dated October 27, 2015. Accomplishing the modification terminates the requirements of paragraphs (g) and (h) of this AD for that airplane.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Airbus EADS CASA Service Bulletin SB–235–28–0023, dated March 14, 2014.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local

Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1112; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or EADS CASA's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) AD 2016–0014, dated January 14, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9109.

(2) For service information identified in this AD, contact EADS CASA (Airbus Defense and Space), Services/Engineering Support, Avenida de Aragón 404, 28022 Madrid, Spain; telephone: +34 91 585 55 84; fax: +34 91 585 31 27; email: *MTA.TechnicalService@Airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 12, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–22434 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9110; Directorate Identifier 2015–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A319–115, A319–132, A320–214, A320–232, A321–211, A321–213, and A321–231 airplanes. This proposed AD was prompted by a report of certain tie rod assemblies installed on the hinged fairing assembly of the main landing gear (MLG) with no cadmium plating on the rod end threads. This proposed AD would require a detailed inspection of certain tie rod assemblies installed on the hinged fairing assembly of the MLG for the presence of cadmium plating, and replacement of tie rod assemblies without cadmium plating. We are proposing this AD to detect and correct the absence of cadmium plating on the rod end threads of the tie rod assemblies. The absence of cadmium plating could lead to galvanic corrosion of the tie rod end threads, resulting in rod end failure, loss of a MLG door, and consequent damage to the airplane.

DATES: We must receive comments on this proposed AD by November 3, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9110; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9110; Directorate Identifier 2015–NM–196–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0234, dated December 8, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Airbus Model A319–115, A319–132, A320–214, A320–232, A321–211, A321–213, and A321–231 airplanes. The MCAI states:

> A production quality issue was identified concerning tie rod assemblies, having Part Number (P/N) starting with D52840212000 or D52840212002, which are installed on the main landing gear (MLG) hinged fairing assembly. This quality issue affects the cadmium plating surface treatment which was inadvertently omitted from the rod end threads of the assembly. The absence of cadmium plating reduces the corrosion protection scheme.
>
> This condition, if not detected and corrected, could lead to galvanic corrosion of

the tie rod end threads, possibly resulting in rod end failure, loss of a MLG door, and consequent injury to persons on ground.

To address this unsafe condition, Airbus identified the affected [manufacturer serial number] MSN and issued [service bulletin] SB A320–52–1167 to provide inspection instructions.

For the reason described above, this [EASA] AD requires a one-time inspection of the affected MLG hinged fairing tie rod assemblies [for the presence of cadmium plating], and, depending on findings, replacement of the affected tie rod assembly.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9110.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–52–1167, dated August 6, 2015. The service information describes procedures for a detailed inspection for the presence of cadmium plating on tie rod assemblies having certain part numbers, and procedures for replacement of tie rod assemblies with no cadmium plating on the rod end threads. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 20 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × $85 per hour = $170	$0	$170	$3,400

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	13 work-hours × $85 per hour = $1,105	Not available	$1,105

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2016–9110; Directorate Identifier 2015–NM–196–AD.

(a) Comments Due Date

We must receive comments by November 3, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A319–115, A319–132, A320–214, A320–232, A321–211, A321–213, and A321–231 airplanes, certificated in any category, as identified in Airbus Service Bulletin A320–52–1167, dated August 6, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by a report of certain tie rod assemblies installed on the hinged fairing assembly of the main landing gear (MLG) with no cadmium plating on the rod end threads. We are issuing this AD to detect and correct the absence of cadmium plating on the rod end threads of the tie rod assemblies. The absence of cadmium plating could lead to galvanic corrosion of the tie rod end threads, resulting in rod end failure, loss of a MLG door, and consequent damage to the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Corrective Action

Within 80 months after the airplane's first flight, do a detailed inspection of each tie rod assembly having a part number (P/N) D52840212000 or D52840212002 at the MLG hinged fairing for the presence of cadmium plating (gold colored threads), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1167, dated August 6, 2015. If during the inspection any tie rod assembly is found that does not have cadmium plating, before further flight, replace the tie rod assembly with a serviceable part having the same part number and cadmium plating, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1167, dated August 6, 2015.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Required for Compliance (RC): If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0234, dated December 8, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9110.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 12, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–22435 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 193

[Docket No. FAA–2006–24855]

Voluntary Disclosure Reporting Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed order designating information as protected from disclosure.

SUMMARY: This notice describes a proposed order through which the Federal Aviation Administration plans to designate a certain category of information as protected from public disclosure pursuant to a Voluntary Disclosure Reporting Program. The Federal Aviation Administration is required to protect the information from disclosure to the public, including disclosure required by statute, such as the Freedom of Information Act, following issuance of an order designating the information as protected. The instant designation is intended to encourage participation in the Voluntary Disclosure Reporting Program.

DATES: Comments must be received on or before October 19, 2016.

ADDRESSES: Send comments identified by Docket Number FAA–2006–24855 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Scott Crosier, ASI/Manager, Voluntary Disclosure Reporting Program (VDRP), Air Carrier Training Systems and Voluntary Safety Programs Branch, AFS–280, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (703) 661–0278; email: *scott.crosier@faa.gov.* Or, Hillary Heintz, AIR Compliance and Enforcement Program Manager, Aircraft Certification Service, AIR–150, 950 L'Enfant Plaza N SW., Washington, DC 20024; telephone (202) 267–1446; email: *hillary.heintz@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority for This Designation

The FAA sets forth this designation pursuant to title 49 of the United States Code (49 U.S.C.) section 40123 and title 14, Code of Federal Regulations (14 CFR), part 193.

II. Overview of Proposed Designation

On August 17, 2006, the Federal Aviation Administration (FAA) issued FAA Order 8000.89, Designation of Voluntary Disclosure Reporting Program (VDRP) Information as Protected from Public Disclosure under part 193. The FAA published the Notice of Order in the **Federal Register**. 71 FR 54405 (Sept. 15, 2006).

This Proposed Order Designating Information as Protected from Disclosure will retain the current protection provided for disclosures under FAA Order 8000.89 while also designating disclosures to the agency by entities as provided in Advisory Circular (AC) 00–68 as protected from public disclosure in accordance with the provisions of part 193. The comment period for the contents of AC 00–68 opened on June 12, 2015 and closed on August 7, 2015.

III. Background

Under 49 U.S.C. 40123, certain voluntarily provided safety and security information is protected from disclosure to encourage persons to provide the information to the FAA. The FAA must issue an order making certain findings before the information is protected from disclosure. The FAA's rules implementing that section are in part 193. If the Administrator issues an order designating information as protected under 49 U.S.C. 40123, that information will not be disclosed under the Freedom of Information Act (5 U.S.C. 552) or other laws except as provided in 49 U.S.C. 40123, 14 CFR part 193, and the order designating the information as protected. This proposed order is issued under § 193.11, which sets out the notice procedure for designating information as protected.

IV. Discussion of the Proposal

Summary of the VDRP Voluntary Information Sharing Program

A. *Who may participate:* Regulated entities as provided in AC 00–58, as amended, AC 00–68, and AC 121–37.

B. *What voluntarily provided information would be protected from disclosure under this proposed designation:* The content of all submissions by a regulated entity that are accepted under the VDRP, including, but not limited to, all of the items listed under Proposed Findings, Paragraph IV D(2) below.

C. *How persons would participate:* Regulated entities participate by notification of an apparent violation to the FAA by the regulated entity in accordance with the VDRP reporting procedures, and completion of corrective actions in accordance with AC 00–58, as amended, AC 00–68, and AC 121–37.

D. *Duration of this information sharing program:* This information sharing program would continue in effect indefinitely, unless the FAA terminates the VDRP, or until the order of designation under part 193 for the VDRP is withdrawn by the FAA.

Proposed Findings

The FAA proposes to designate information received under the VDRP as protected under 49 U.S.C. 40123 and 14 CFR 193.7 based on the following findings:

(1) Summary of why the FAA finds that the information will be provided voluntarily.

The FAA finds that the information will be provided voluntarily. No regulated entity is required to participate in the VDRP. Initiation of submissions under the VDRP are indicative of the willingness of regulated entities to identify and correct their own instances of regulatory noncompliance, develop long term comprehensive fixes or corrective action plans, and foster safe operating practices.

(2) Description of the type of information that may be voluntarily provided under the program and a summary of why the FAA finds that the information is safety or security related.

The information that would be voluntarily submitted under a VDRP is described in AC 00–58, as amended, AC 00–68, and AC 121–37. Because the Federal Aviation Regulations specify the minimum requirements for safety, and VDRP submissions entail violations of those regulations, the information is inherently safety related. It would include the following:

(a) Information contained in an initial notification to the FAA:

—A brief description of the apparent violation, including an estimate of the duration of time that it remained undetected, as well as how and when it was discovered;

—Verification that noncompliance ceased after it was identified;

—A brief description of the immediate action taken after the apparent violation was identified, the immediate action taken to terminate the conduct that resulted in the apparent violation, and the person responsible for taking the immediate action;

—Verification that an evaluation is underway to determine if there are any systemic problems;

—Identification of the person responsible for preparing the comprehensive fix for disclosures under AC 00–58, as amended, and AC 121–37, or the corrective action plan for disclosures under AC 00–68; and

—Acknowledgment that a detailed written report will be provided to the designated FAA official within the timeframe specified in AC 00–58, as amended, AC 121–37, or AC 00–68, as amended.

(b) Information contained in a detailed written report:

—A list of the specific FAA regulations that may have been violated;

—A description of the apparent violation, including the duration of time it remained undetected, as well as how and when it was detected;

—A description of the immediate action taken to terminate the conduct that resulted in the apparent violation, including when it was taken, and who was responsible for taking the action;

—An explanation that shows the apparent violation was inadvertent;

—Evidence that demonstrates the seriousness of the apparent violation and the regulated entity's analysis of that evidence;

—A detailed description of the proposed comprehensive fix or corrective action plan, outlining the planned corrective steps, the responsibilities for implementing

those corrective steps, and a time schedule for completion of the fix; and
—Identification of the company official responsible for monitoring the implementation and completion of the comprehensive fix.

(c) FAA generated documentation and electronic information that is directly associated with an accepted VDRP submission, including, but not limited to:
—Acknowledgment of receipt of a VDRP submission;
—Notification of VDRP acceptance, request for modification, or rejection;
—Routine correspondence directly associated with a VDRP submission;
—FAA records directly associated with FAA monitoring of a comprehensive fix or corrective action plan;
—FAA Letter of Correction in accordance with AC 121–37 or, written notification in accordance with AC 00–58, as amended, and AC 00–68, as amended, for an accepted VDRP submission; and
—All FAA electronic databases of VDRP submissions and FAA responses.

(d) Information contained in a report submitted to the FAA under the informal voluntary disclosure reporting process described in AC 00–68, as amended, including, but not limited to:
—A description of the apparent noncompliance;
—A causal analysis of the apparent noncompliance;
—The corrective action(s) taken or planned; and
—The date by which the regulated entity will complete the corrective action(s).

(3) Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information.

The FAA finds that disclosure of the information would inhibit the voluntary provision of that type of information. Regulated entities are reluctant to voluntarily disclose instances of regulatory noncompliance if such submissions might be subject to public disclosure. A significant impediment to participation in the VDRP is concern over public disclosure of the information, and, if disclosed, the potential for it to be used for other than the system safety enhancement purposes for which the VDRP was created. Withholding such information from disclosure is consistent with the FAA's safety and security responsibilities because, unless the FAA can provide assurance that it will not be disclosed, regulated entities will be reluctant to participate in the program. Information received under the VDRP will be identified as such in each FAA line of business's central database used to track submissions. To encourage continued use of the VDRP, the FAA will not keep the identity of persons reporting, or detailed information about disclosures, under that program in any central database.

The FAA finds that by virtue of designating information provided under the VDRP as protected under part 193, the reluctance of regulated entities to participate due to concerns about possible disclosure of the information will be mitigated. In addition, FAA will be able to retain more information about the disclosures, including the identity of the reporters, in an FAA database, without negatively impacting participation in the VDRP. Disclosures under the VDRP enable the FAA to become aware of many more instances of regulatory noncompliance than it otherwise would and, moreover, the VDRP permits the FAA to assure that appropriate corrective action is taken. If regulated entities do not participate, the FAA and the public will be deprived of the opportunity to make the system safety improvements that receipt of the information otherwise enables.

(4) Summary of why the receipt of that type of information aids in fulfilling the FAA's safety and security responsibilities.

The FAA finds that receipt of VDRP information aids in fulfilling the FAA's safety and security responsibilities. A primary purpose of FAA regulations is to assure public safety. Because the VDRP identifies and corrects instances of regulatory noncompliance of which the FAA may be otherwise unaware, the program offers significant potential for enhancement of public safety. Receipt of this otherwise unavailable information would also provide the FAA with an improved basis for modifying procedures, policies, and regulations to improve safety and efficiency.

(5) Summary of why withholding such information from disclosure would be consistent with the FAA's safety and security responsibilities, including a statement as to the circumstances under which, and a summary of why, withholding such information from disclosure would not be consistent with the FAA's safety and security responsibilities, as described in § 193.9.

The FAA finds that withholding VDRP information provided to the FAA is consistent with the FAA's safety responsibilities. The VDRP specifically provides that appropriate corrective action must be taken by the regulated entity for all instances of regulatory noncompliance accepted under the program. To be accepted by the FAA, apparent violations disclosed under the program must be inadvertent, and, where applicable, must not indicate a lack, or reasonable question of a lack, of qualification of the regulated entity. Corrective action under the VDRP can be accomplished by the regulated entity and verified by the FAA without disclosure of the protected information. If the FAA determines that the steps taken by the entity are not those documented in the written report, the submission may be excluded from the VDRP, and appropriate legal enforcement action may be initiated.

The FAA will release information submitted under a VDRP as specified in part 193 and this proposed order. The FAA may disclose de-identified summary information to explain the need for changes in FAA policies, procedures, and regulations. The term "de-identified" means that the identity of the source of the information and the names of the regulated entity, employees, and other persons, as well as any other information that could be used to ascertain the identity of the submitter have been redacted. The FAA may disclose de-identified, summarized VDRP information that identifies a systemic problem in the aviation system, when other persons need to be advised of the problem so that they can take corrective action. The FAA may disclose de-identified aggregate statistical information concerning VDRP submissions. The FAA may disclose independently obtained information relating to any event disclosed in a VDRP report, unless the FAA determines that in the case of an accepted VDRP submission, release of such independently obtained information would be inconsistent with the provisions of this order, or would otherwise be prohibited by public law or regulation. The FAA also may disclose information concerning enforcement action taken for a regulatory violation initially identified in a VDRP submission, when that submission is not accepted by the FAA, or, if accepted, it is later excluded by the FAA because of the regulated entity's failure to comply with the criteria of the VDRP. The FAA also may disclose any information about a disclosure initially submitted under the VDRP that is not accepted, or accepted but later excluded because of the regulated entity's failure to comply with the criteria of the VDRP.

(6) Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources.

In accordance with AC 00–58, as amended, AC 00–68, and AC 121–37, all

VRDP submissions must be clearly identified as such by the regulated entity making the submission. Any other information received by the FAA from the regulated entity concerning the content of a VDRP submission must be clearly labeled as follows to be eligible for protection under this designation: "WARNING: The Information in this Document is Protected from Disclosure under 49 U.S.C. 40123 and 14 CFR part 193." If the information is submitted electronically, the warning notice must be appropriately embedded in the electronic submission in a fashion that assures the visibility of the warning to any viewer.

Proposed Designation

Accordingly, the FAA proposes to designate the above-described information submitted under a VDRP to be protected under 49 U.S.C. 40123 and part 193, when obtained by the FAA pursuant to an accepted VDRP submission.

V. Additional information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

B. Availability of This Proposed Designation

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Aircraft Certification Office, AIR–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–8235. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued under authority provided by 49 U.S.C. 106(f) and 40123 in Washington, DC, on September 7, 2016.

David W. Hempe,

Deputy Director, Aircraft Certification Service, AIR–1.

[FR Doc. 2016–21966 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice: 9520]

RIN 1400–AD81

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates—Passport Services Fee Changes

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes an adjustment to the Schedule of Fees for Consular Services of the Department of State's Bureau of Consular Affairs ("Schedule of Fees" or "Schedule") for the execution fee for passport books and cards. The Department is adjusting this fee in light of the findings of the most recent annual update to the Cost of Service Model to better align the fees for consular services with the costs of providing those services.

DATES: The Department of State will accept comments on this proposed rule until November 18, 2016.

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

- Visit the *Regulations.gov* Web site at: *http://www.regulations.gov* and search for the Regulatory Information Number (RIN) 1400–AD81 or docket number DOS–2016–0029.
- *Mail paper document:* U.S. Department of State, Office of the Comptroller, Bureau of Consular Affairs (CA/C), SA–17, 8th Floor, Washington, DC 20522–1707.
- *Email: fees@state.gov.* You must include the RIN (1400–AD81) in the subject line of your message.
- All comments should include the commenter's name, the organization the commenter represents, if applicable, and the commenter's address. If the Department is unable to read your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment. After the conclusion of the comment period, the Department will publish a Final Rule (in which it will address relevant comments) as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: James McDaniel, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202–485–6694, telefax: 202–485–6826; email: *fees@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

The proposed rule makes a change to the Schedule of Fees. The Department sets and collects its fees based on the concept of full cost recovery. The Department completed its most recent review of current consular fees and will implement a change to the Schedule of Fees based on the costs of services calculated by the Fiscal Year 2014 update to the Cost of Service Model.

What is the authority for this action?

The Department of State derives the general authority to set fees based on the cost of the consular services it provides, and to charge those fees, from the general user charges statute, 31 U.S.C. 9701. See, *e.g.,* 31 U.S.C. 9701(b)(2)(A) ("The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the government."). As implemented through Executive Order 10718 of June 27, 1957, 22 U.S.C. 4219 further authorizes the Department to establish fees to be charged for official services provided by U.S. embassies and consulates.

Several statutes address specific fees relating to passports. For instance, 22 U.S.C. 214(a) authorizes the Secretary of State to set the passport execution fee by regulation, and to authorize state and local government officials and the U.S. Postal Service to collect and retain the execution fee for each application for a passport accepted by such officials or the U.S. Postal Service.

Certain people are exempted by law or regulation from paying specific fees. They include, for instance, exemptions from the passport execution and application fees for officers or employees of the U.S. government proceeding abroad in the discharge of official duties and exemption from the passport execution fee if those officers or employees execute their application before a federal official. See 22 U.S.C. 214(a); 22 CFR 22.1; 22 CFR 51.52(b).

The Department last changed fees for passport services in an interim final rule dated September 8, 2015. See Department of State Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates, 22 CFR part 22 (80 FR 53704). Those changes to the Schedule went into effect September 26, 2015. A final rule regarding those fees has not yet been published.

Why is the Department adjusting fees at this time?

With certain exceptions—such as the reciprocal nonimmigrant visa issuance fee—the Department of State generally sets consular fees at an amount calculated to achieve recovery of the costs to the U.S. government of providing the consular service, in a manner consistent with general user charges principles, regardless of the specific statutory authority under which the fees are authorized. As set forth in OMB Circular A–25, as a general policy, each recipient should pay a reasonable user charge for government services, resources, or goods from which he or she derives a special benefit, at an amount sufficient for the U.S. government to recover the full costs to it of providing the service, resource, or good. See OMB Circular No. A–25, sec. 6(a)(2)(a). The OMB guidance covers all Federal Executive Branch activities that convey special benefits to recipients beyond those that accrue to the general public. See id., sections 4(a), 6(a)(1).

The Department reviews consular fees through an annual update to its Cost of Service Model to determine the appropriateness of each fee in light of OMB guidance. The Department proposes to make the change set forth below in the Schedule of Fees accordingly. The Cost of Service Model is an activity-based costing model that determines the current direct and indirect costs to the U.S. government associated with each consular good and service the Department provides. The model update identified the direct and indirect cost of the passport execution fee, and the update's results formed the basis of the change herein proposed to the Schedule.

Activity-Based Costing

To set fees in accordance with the general user charges principles, the Department must determine the true cost of providing consular services. Following guidance provided in "Managerial Cost Accounting Concepts and Standards for the Federal Government," OMB's Statement #4 of Federal Accounting Standards (SFFAS #4), available at *http://www.fasab.gov/pdffiles/sffas-4.pdf*, the Department chose to develop and use an activity-based costing (ABC) model to determine the true cost of each of its consular services.

The Government Accountability Office (GAO) defines activity-based costing as a "set of accounting methods used to identify and describe costs and required resources for activities within processes." Because an organization can use the same staff and resources (computer equipment, production facilities, etc.) to produce multiple products or services, ABC models seek to identify and assign costs to processes and activities, and then to individual products and services through the identification of key cost drivers referred to as "resource drivers" and "activity drivers." ABC models also seek to identify the amount of time an organization's personnel spend on each service and how much overhead cost (rent, utilities, facilities maintenance, etc.) is associated with delivering each service. ABC models require financial and accounting analysis, and modeling skills combined with a detailed understanding of an organization's business processes. ABC models require an organization to identify all activities required to produce a particular product or service ("activities") and all resources consumed (costs) in the course of producing that product or service. An organization also must measure the quantity of resources consumed ("resource driver"); and the frequency and intensity of demand placed on activities to produce services ("activity driver"). SFFAS Statement #4 provides a detailed discussion of the use of cost accounting by the U.S. government.

The Department's Cost of Service Model

The Department conducted periodic Cost of Service Studies using ABC methods to determine the costs of its consular services through 2009. In 2010, the Department moved to adopt an annually updated Cost of Service Model (CoSM) that measures all of its consular operations and costs, including all of the activities needed to provide consular services, whether fee-based or not. This provides a comprehensive and detailed look at all consular services and all services that the Department performs for other agencies in connection with its consular operations. The CoSM now includes approximately 80 distinct activities, and enables the Department to model its consular-related costs with a high degree of precision.

The Department uses three methods outlined in SFFAS Statement #4 (paragraph 149(2)) to assign resource costs to activities: (a) Direct tracing; (b) estimation based on surveys, interviews, or statistical sampling; and (c) allocations. The Department uses direct tracing to assign the cost of, for example, a physical passport book or the visa foil placed in a visa applicant's passport. Assigning costs to activities such as adjudicating a passport or visa application requires estimation based on surveys, interviews, or statistical sampling to determine who performs an activity and how long it takes. Indirect costs (overhead) in the CoSM are allocated according to the level of effort needed for a particular activity. Where possible, the model uses overhead cost pools to assign indirect costs only to related activities. For instance, the cost of rent for domestic passport agencies is assigned only to passport costs, not to visas or other services the Department provides only overseas. The Department allocates indirect support costs to each consular service by the portion of each cost attributable to consular activities. For example, the model allocates a portion of the cost of the Department's Bureau of Human Resources to consular services. The total amount of this allocation is based on the number of Bureau of Human Resources staff members who support Bureau of Consular Affairs personnel. In turn, this amount is allocated among the different consular services by the level of effort to provide them.

To assign labor costs, the Department relies on a variety of industry-standard estimation methodologies. To document how consular staff divide their time overseas, the Department conducts the Consular Overseas Data Collection (CODaC) survey of a representative sample of posts each year. The Department uses CODaC survey data in conjunction with volume data from more than 200 individual consular sections in consulates and embassies worldwide, to develop resource drivers to assign labor costs to activities. For consular activities that take place in the United States, the Department collects volume data from periodic workload reports, including Passport Agency Task Reports pulled from management databases that include Passport's Management Information System. Financial information is gathered from reports by the Bureau of Consular Affairs' Office of the Comptroller. The Department converts the cost and workload data it collects into resource drivers and activity drivers for each resource and activity.

Because approximately 70 percent of the workforce involved in providing consular services are full-time Federal employees, if demand for a service falls precipitously, the Department cannot shed employees as quickly as the private sector. Likewise, should demand rise precipitously, the Department cannot add employees quickly, because delivering the majority of consular services requires specially trained employees who cannot begin their training until they have completed the Federal hiring process and obtained a security clearance. Additionally, given government procurement rules and security requirements, the Department must commit to many of its facilities and infrastructure costs years before a facility becomes available. In spite of changes in demand, the Department is obligated to cover these costs. Given these and other constraints on altering the Department's cost structure in the short term, changes in service volumes can have dramatic effects on whether a fee is self-sustaining. Therefore, the CoSM includes two years of predictive data and three years of actual data. Predictive workloads are based on projections by the Office of Visa Services, the Office of Passport Services, and other parts of the Bureau of Consular Affairs that are consistent with Department budget documents prepared for Congress.

The costs the Department enters into the CoSM include every line item of costs, including items such as physical material for making passports and visas, salaries, rent, supplies, and IT hardware and software. The Department then determines a resource driver (from, for example, the responses to the CODaC survey) for each of these costs, as discussed above and enters the resource drivers and assignments into the model. The Department then selects an activity driver, such as the volume data discussed above, for each activity, in order to assign these costs to each service type. This process allows the model to calculate a total cost for each of the Schedule of Fees' line items for visa services, passport services, and overseas citizens services, and services for other government agencies and no-fee services. The model then divides this total cost by the total volume of the service or product in question in order to determine a final unit cost for the service or product. Projected costs for predictive years also are included to take account of changes in the size of consular staff, workload, and similar factors. The resulting database constitutes the CoSM. The Department continues to refine and update the CoSM in order to set fees commensurate with the cost of providing consular services. Because the CoSM is a complex series of iterative computer processes incorporating more than a million calculations, it is not reducible to a tangible form such as a document. Inputs are formatted in spreadsheets for entry into the ABC software package. The ABC software package itself is an industry standard commercial off-the-shelf product, SAP Business Objects. The software's output includes spreadsheets with raw unit costs, validation reports, and management reports.

A number of fees are set at levels other than cost. These include passport fees for minors, which are set below cost as a longstanding matter of policy, and the reduced Border Crossing Card Fee for Mexican Minors, which is set by law. The true cost of these services must be offset by other fees. These offsets are calculated on additional spreadsheets outside the model software. Final unit costs incorporate these offsets.

Schedule of Fees Updates

The last broad set of amendments to the Schedule of Fees occurred in 2014, though the Department has made some specific amendments to it since that time. Some fees, including the Immigrant Visa petition and the Immigrant Visa ineligibility waiver (items 31(a) and 35(c) respectively), are set by the Department of Homeland Security and were most recently updated by that agency on November 23, 2010. The change to the current Schedule of Fees is discussed below. The CoSM estimate discussed below is based on projected workload for Fiscal Year 2016, and the proposed fee has been rounded to make it easier to collect.

Passport Execution Fee

The Department proposes to increase the execution fee for passport books and cards from $25 to $35, excepting those persons who are exempted statutorily from paying the passport execution fee. The passport execution fee is applicable to all first-time passport applicants and certain other applicants who must apply in person, such as minors under the age of 16. Applicants apply in-person at post offices and other acceptance facilities, such as local clerks of court, and at the Department's passport offices. The passport execution fee includes the costs associated with accepting passport applications and fees in-person, including salaries, benefits, and an allocated portion of overhead including, but not limited to, rent, utilities, supplies, and equipment. The Department's CoSM showed that these costs were more than $33. The U.S. Postal Service—the acceptance agent for the majority of passport applications—regularly conducts a similar study and found that these costs were more than $34. See 22 U.S.C. 214(a); 22 CFR 51.51(b).

The $10 increase in the passport execution fee will result in a $10 increase to the cost to first-time passport applicants and certain applicants who must appear at post offices and other acceptance facilities such as local clerks of court. Individuals who apply for a passport renewal by mail will not see a fee increase.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a proposed rule, with a 60-day provision for public comments.

Regulatory Flexibility Act

The Department reviewed this proposed rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

Unfunded Mandates Act of 1995

This proposed rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501–1504.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is a major rule as defined by 5 U.S.C. 804(2).

Executive Order 12866

The Department has reviewed this proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders. OMB determined that this rule is significant under Executive Order 12866, and the Department confirmed that it is economically significant as defined by the Executive Order.

This proposed rule is necessary in light of the Department of State's CoSM finding that the cost of executing first-time passports is higher than the current fee. The Department is setting the fees in accordance with 31 U.S.C. 9701 and other applicable authority, as described in more detail above. See, *e.g.,* 31 U.S.C. 9701(b)(2)(A) ("The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the Government."). This regulation generally sets the fee for passport executions at the amount required to recover the costs associated with providing this service.

Details of the proposed fee change are as follows:

Item No.	Proposed fee	Current fee	Change in fee	Percentage increase	Estimated annual number of applications[1]	Estimated change in annual fees collected[1]
SCHEDULE OF FEES FOR CONSULAR SERVICES						
*	*	*	*	*	*	*
PASSPORT AND CITIZENSHIP SERVICES						
1. Passport Book or Card Execution: Required for first-time applicants and others who must apply in person	$35	$25	$10	40%	11,763,831	$117,638,310
Total						$117,638,310
*	*	*	*	*	*	*

[1] Based on projected FY 2016 workload.

The Department of State does not anticipate that demand for passport services affected by this proposed rule will change significantly because of these fee changes, and welcomes public comment on that expectation.

The Department does not believe that passport application fees are a significant determining factor when U.S. citizens decide to travel internationally. The price of a passport book or card remains minor in comparison with other costs associated with foreign travel, given that taxes and surcharges alone on an international airfare can easily surpass $100. As a result, the Department does not believe passport demand will be significantly affected by increases of the size proposed.

Executive Orders 12372 and 13132

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this regulation.

Executive Order 13175

The Department determined that this proposed rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This information collection contained in this proposed rule is pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. Information Collection 1405–0004, form DS–11 is related to this proposed rule. The Notice of Proposed Rulemaking proposes an increase in the passport execution fee, from $25 to $35, based on the result of the Department CoSM, which found that the government's cost of executing a first-time passport is higher than the fee that the Department was charging an individual applicant. The CoSM is an activity-based costing model that determines the current direct and indirect costs to the U.S. government associated with each consular good and service the Department provides.

This information collection was renewed on August 30, 2016, with an expiration date of August 31, 2019. This notice request comments as it pertains to the proposed fee increase from $25 to $35.

(1) *Title of Information Collection:* Application for a U.S. Passport.
(2) *OMB Control Number:* 1405–0004.
(3) *Type of Request:* Revision of a Currently Approved Collection.
(4) *Form Number:* DS–11.
(5) *Respondents:* Individuals or Households.
(6) *Estimated Number of Respondents:* 11,763,831.
(7) *Estimated Number of Responses:* 11,763,831.
(8) *Average Time per Response:* 85 Minutes.
(9) *Total Estimated Burden Time:* 16,665,427 hours.
(10) *Frequency:* On occasion.
(11) *Obligation to Respond:* Required to Obtain a Benefit.
(12) *Submit comments to OMB by the following methods:*

Office of Management and Budget (OMB):

- Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:
- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

Fax: 202–395–5806. Attention: Desk Officer for Department of State.

Abstract of Proposed Collection

The DS–11 solicits data necessary for Passport Services to issue a U.S. passport (book and/or card format) pursuant to authorities granted to the Secretary of State by 22 U.S.C. 211a *et seq.* and Executive Order (E.O.) 11295 (August 5, 1966) for the issuance of passports to U.S. nationals.

The issuance of U.S. passports requires the determination of identity, nationality, and entitlement with reference to the provisions of Title III of the Immigration and Nationality Act (INA) (8 U.S.C. 1401–1504), the 14th Amendment to the Constitution of the United States, other applicable treaties and laws, and implementing regulations at 22 CFR parts 50 and 51. The specific regulations pertaining to the Application for a U.S. passport are at 22 CFR 51.20 through 51.28.

Methodology

The information collected on the DS–11 is used to facilitate the issuance of passports to U.S. citizens and nationals. The primary purpose of soliciting the information is to establish citizenship, identity, and entitlement to the issuance of the U.S. passport or related service, and to properly administer and enforce the laws pertaining to the issuance thereof.

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the Application for a U.S. passport. Passport applicants can either download the DS–11 from the Internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed and executed at an acceptance facility or passport agency, and submitted with evidence of citizenship and identity.

List of Subjects in 22 CFR Part 22

Consular services, Fees, Passports.

Accordingly, for the reasons stated in the preamble, 22 CFR part 22 is proposed to be amended as follows:

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

■ 1. The authority citation for part 22 is revised to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1183a note, 1351, 1351 note, 1714, 1714 note; 10 U.S.C. 2602(c); 11 U.S.C. 1157 note; 22 U.S.C. 214, 214 note, 1475e, 2504(a), 2651a, 4201, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Exec. Order 10,718, 22 FR 4632 (1957); Exec. Order 11,295, 31 FR 10603 (1966).

■ 2. Revise item 1 in the table "Schedule of Fees for Consular Services" in § 22.1 to read as follows:

§ 22.1 Schedule of fees.

* * * * *

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
Passport and Citizenship Services	
1. Passport Book or Card Execution: Required for first-time applicants and others who must apply in person (Applicants applying for both the book and card simultaneously on the same application pay only one execution fee.)	$35
* * * * * *	*

Dated: July 31, 2016.

Patrick F. Kennedy,

Under Secretary for Management.

[FR Doc. 2016–22215 Filed 9–16–16; 8:45 am]

BILLING CODE 4710–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 008–2016]

Privacy Act of 1974; Implementation

AGENCY: Federal Bureau of Investigation, United States Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the Federal Bureau of Investigation (FBI), a component of the United States Department of Justice ("Department" or "DOJ"), has published a notice of a new Privacy Act system of records, "FBI Insider Threat Program Records (ITPR)," JUSTICE/FBI–023. In this notice of proposed rulemaking, the FBI proposes to exempt this system from certain provisions of the Privacy Act in order to avoid interference with efforts to detect, deter, and/or mitigate insider threats to national security or to the FBI and its personnel, facilities, resources, and activities. For the reasons provided below, the Department proposes to amend its Privacy Act regulations by establishing an exemption for records in this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). Public comment is invited.

DATES: Comments must be received by October 19, 2016.

ADDRESSES: Address all comments to the U.S. Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530–0001 or facsimile 202–307–0693. To ensure proper handling, please reference the CPCLO Order No. on your correspondence. You may review an electronic version of the proposed rule at *http://www.regulations.gov,* and you may also comment by using that Web site's comment form for this regulation. When submitting comments electronically, you must include the CPCLO Order No. in the subject box.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Daylight Savings Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Department's public docket. Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONALLY IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all personally identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personally identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

FOR FURTHER INFORMATION CONTACT: Richard R. Brown, Federal Bureau of Investigation, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, J. Edgar Hoover Building, 935 Pennsylvania Avenue NW., Washington, DC 20535–0001, telephone 202–324–3000.

SUPPLEMENTARY INFORMATION: The Presidential Memorandum—*National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs* (Nov. 21, 2012) states that an insider threat is the threat that any person with authorized access to any United States Government resources, to include personnel, facilities, information, equipment, networks or systems, will use her/his authorized access, wittingly or unwittingly, to do harm to the security of the United States through espionage, terrorism, unauthorized disclosure of national security information, or through the loss or degradation of departmental resources or capabilities.

In the Notice section of today's **Federal Register**, the FBI has established a new Privacy Act system of records, "FBI Insider Threat Program Records (ITPR)," JUSTICE/FBI–023. The system serves as a repository for FBI information and for information lawfully received from other federal agencies or purchased from private companies and permits the comparison of data sets in order to provide a more complete picture of potential insider threats.

In this rulemaking, the FBI proposes to exempt this Privacy Act system of records from certain provisions of the Privacy Act in order to avoid interference with the responsibilities of the FBI to detect, deter, and/or mitigate insider threats as established by federal law and policy. For an overview of the Privacy Act, see: *https://www.justice.gov/opcl/privacy-act-1974.*

Regulatory Flexibility Act

This proposed rule relates to individuals rather than small business entities. Pursuant to the requirements of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, therefore, the proposed rule will not have a significant economic impact on a substantial number of small entities.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 *et seq.,* requires the FBI to comply with small entity requests for information and advice about compliance with statutes and regulations within FBI jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**: Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/archive/sum__sbrefa.html.*

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the FBI consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule. The records that are contributed to this system may be provided by individuals covered by this system, the FBI, DOJ, and United States Government components, other domestic and foreign government entities, or purchased from private entities, and sharing of this information electronically will not increase the paperwork burden on the public.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 103–3, 109 Stat. 48, requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

Subpart E—Exemption of Records Systems Under the Privacy Act

§ 16.96 [AMENDED]

■ 2. Amend § 16.96 by adding paragraphs (x) and (y) to read as follows:

§ 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.

* * * * *

(x) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3); (e)(4)(G), (H) and (I); (e)(5) and (8); (f) and (g) of the Privacy Act:

(1) FBI Insider Threat Program Records (JUSTICE/FBI–023).

(2) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Where compliance would not appear to interfere with or adversely affect the purpose of this system to detect, deter, and/or mitigate insider threats to national security or to the FBI, the applicable exemption may be waived by the FBI in its sole discretion.

(y) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because this system is exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any insider threat-related interest in the individual by the FBI or agencies that are recipients of the disclosures. Revealing this information could compromise ongoing, authorized law enforcement and intelligence efforts, particularly efforts to identify and/or mitigate insider threats to national security or to the FBI. Revealing this

information could also permit the record subject to obtain valuable insight concerning the information obtained during any investigation and to take measures to impede the investigation, *e.g.*, destroy evidence or flee the area to avoid the investigation.

(2) From subsection (c)(4) notification requirements because this system is exempt from the access and amendment provisions of subsection (d) as well as the accounting of disclosures provision of subsection (c)(3). The FBI takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of FBI records, it will share that information in appropriate cases.

(3) From subsection (d)(1), (2), (3) and (4), (e)(4)(G) and (H), (e)(8), (f) and (g) because these provisions concern individual access to and amendment of law enforcement, intelligence and counterintelligence, and counterterrorism records and compliance could alert the subject of an authorized law enforcement or intelligence activity about that particular activity and the interest of the FBI and/or other law enforcement or intelligence agencies. Providing access could compromise information classified to protect national security; disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; provide information that would allow a subject to avoid detection or apprehension; or constitute a potential danger to the health or safety of law enforcement personnel, confidential sources, or witnesses.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement and intelligence purposes. The relevance and utility of certain information that may have a nexus to insider threats to national security or to the FBI may not always be fully evident until and unless it is vetted and matched with other sources of information that are necessarily and lawfully maintained by the FBI.

(5) From subsections (e)(2) and (3) because application of these provisions could present a serious impediment to efforts to detect, deter and/or mitigate insider threats to national security or to the FBI and its personnel, facilities, resources, and activities. Application of these provisions would put the subject of an investigation on notice of the investigation and allow the subject an opportunity to engage in conduct intended to impede the investigative activity or avoid apprehension.

(6) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than has been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to the FBI. Further, greater specificity of properly classified records could compromise national security.

(7) From subsection (e)(5) because in the collection of information for authorized law enforcement and intelligence purposes, including efforts to detect, deter, and/or mitigate insider threats to national security or to the FBI and its personnel, facilities, resources, and activities, due to the nature of investigations and intelligence collection, the FBI often collects information that may not be immediately shown to be accurate, relevant, timely, and complete, although the FBI takes reasonable steps to collect only the information necessary to support its mission and investigations. Additionally, the information may aid in establishing patterns of activity and providing criminal or intelligence leads. It could impede investigative progress if it were necessary to assure relevance, accuracy, timeliness and completeness of all information obtained during the scope of an investigation. Further, some of the records in this system may come from other domestic or foreign government entities, or private entities, and it would not be administratively feasible for the FBI to vouch for the compliance of these agencies with this provision.

Dated: September 2, 2016.

Erika Brown Lee,

Chief Privacy and Civil Liberties Officer, Department of Justice.

[FR Doc. 2016–22412 Filed 9–16–16; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 150211138–6789–01]

RIN 0648–XD771

Endangered and Threatened Wildlife and Plants; Proposed Rule To List Two Guitarfishes as Threatened

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; 12-month petition finding; request for comments.

SUMMARY: We, NMFS, have completed a comprehensive status review under the Endangered Species Act (ESA) for the common guitarfish (*Rhinobatos rhinobatos*) and the blackchin guitarfish (*Rhinobatos cemiculus*). We have determined that, based on the best scientific and commercial data available, and after taking into account efforts being made to protect these species, both species meet the definition of a threatened species under the ESA. Therefore, we propose to list both species as threatened species under the ESA. We are not proposing to designate critical habitat for either of the species proposed for listing because the geographical areas occupied by these species are entirely outside U.S. jurisdiction. We are soliciting comments on our proposal to list these two foreign marine guitarfish species.

DATES: Comments on this proposed rule must be received by November 18, 2016. Public hearing requests must be made by November 3, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0082, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0082.* Click the "Comment Now" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Brendan Newell, NMFS Office of Protected Resources (F/PR3), 1315 East-West Highway, Silver Spring, MD 20910, USA.

Instructions: You must submit comments by one of the above methods to ensure that we receive, document, and consider them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). You can find the petition, status review report, **Federal Register** notices, and the list of references electronically on our Web site at *http://www.nmfs.noaa.gov/pr/species/petition81.htm.*

FOR FURTHER INFORMATION CONTACT: Brendan Newell, NMFS, Office of Protected Resources (OPR), Telephone: (301) 427–7710 or Marta Nammack, NMFS, (OPR), Telephone: (301) 427–8469.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2013, we received a petition from WildEarth Guardians to list 81 marine species as threatened or endangered under the ESA. This petition included species from many different taxonomic groups, and we prepared our 90-day findings in batches by taxonomic group. We found that the petitioned actions may be warranted for 27 of the 81 species and announced the initiation of status reviews for each of the 27 species (78 FR 63941, October 25, 2013; 78 FR 66675, November 6, 2013; 78 FR 69376, November 19, 2013; 79 FR 9880, February 21, 2014; and 79 FR 10104, February 24, 2014). This document addresses the findings for 2 of those 27 species: Common guitarfish (*Rhinobatos rhinobatos*) and blackchin guitarfish (*Rhinobatos cemiculus*). The status of, and relevant **Federal Register** notices for, the other 25 species can be found on our Web site at *http://www.nmfs.noaa.gov/pr/species/petition81.htm.*

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we consider first whether a group of organisms constitutes a "species" under the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines a "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature."

On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a distinct population segment (DPS) of a taxonomic species (the DPS Policy; 61 FR 4722). The DPS Policy identified two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. As stated in the DPS Policy, Congress expressed its expectation that the Services would exercise authority with regard to DPSs sparingly and only when the biological evidence indicates such action is warranted. Based on the scientific information available, we determined that the common guitarfish (*Rhinobatos rhinobatos*) and blackchin guitarfish (*Rhinobatos cemiculus*) are "species" under the ESA. There is nothing in the scientific literature indicating that either of these species should be further divided into subspecies or DPSs.

Section 3 of the ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" and a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." We interpret an "endangered species" to be one that is presently in danger of extinction. A "threatened species," on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

When we consider whether a species might qualify as threatened under the ESA, we must consider the meaning of the term "foreseeable future." It is appropriate to interpret "foreseeable future" as the horizon over which predictions about the conservation status of the species can be reasonably relied upon. The foreseeable future considers the life history of the species, habitat characteristics, availability of data, particular threats, ability to predict threats, and the reliability to forecast the effects of these threats and future events on the status of the species under consideration. Because a species may be susceptible to a variety of threats for which different data are available, or which operate across different time scales, the foreseeable future is not necessarily reducible to a particular number of years.

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened due to any of the following factors: the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. Under section (4)(b)(1)(A), we are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species' status and after taking into account efforts being made by any state or foreign nation to protect the species.

Status Review

The status review for the two guitarfishes addressed in this finding was conducted by a NMFS biologist in the Office of Protected Resources. Henceforth, the status review report for these guitarfishes will be referenced in this preamble as "Newell (2016)", and is available at *http://www.nmfs.noaa.gov/pr/species/petition81.htm* and on the respective species pages found on the Office of Protected Resources Web site (*http://www.nmfs.noaa.gov/pr/species/index.htm*). In order to complete the status review, information was compiled on each species' biology, ecology, life history, threats, and conservation status from information contained in the petition, our files, a comprehensive literature search, and consultation with experts. We also considered information submitted by the public in response to our petition finding.

Newell (2016) provided an evaluation of the factors specified by section 4(a)(1)(A)–(E) of the ESA (16 U.S.C. 1533(a)(1)(A)–(E)) (*Summary of Factors Affecting the Two Guitarfish Species*), as well as the species' demographic risks, such as low productivity, and then synthesized this information to estimate the extinction risk of the species (*Extinction Risk*). For the complete threats assessment, demographic risks analysis, and risk of extinction analysis, see Newell (2016).

The demographic risk analysis, mentioned above, is an assessment of the manifestation of past threats that have contributed to the species' current status and informs the consideration of the biological response of the species to present and future threats. For this analysis, Newell (2016) considered the demographic viability factors developed by McElhany *et al.*, (2000). The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our status reviews, including for Pacific salmonids, Pacific hake, walleye pollock, Pacific cod, Puget Sound rockfishes, Pacific herring, scalloped and great hammerhead sharks, and black abalone (*see http:// www.nmfs.noaa.gov/pr/species/* for links to these reviews). In this approach, the collective condition of individual populations is considered at the species level according to four demographic viability factors: abundance; growth rate/productivity; spatial structure/ connectivity; and diversity. These viability factors reflect concepts that are well-founded in conservation biology, and that individually and collectively provide strong indicators of extinction risk.

In conducting the threats assessment, Newell (2016) identified and summarized the section 4(a)(1) factors that are currently operating on the species and their likely impact on the biological status of the species. Newell (2016) also looked for future threats (where the impact on the species has yet to be manifested), and considered the reliability of forecasting the effects of these threats and future events on the status of these species. Using the findings from the demographic risk analysis and threats assessment, Newell (2016) evaluated the overall extinction risk of the species. Because species-specific information (such as current abundance) is sparse, qualitative "reference levels" of risk were used to describe extinction risk. The definitions of the qualitative "reference levels" of extinction risk were as follows: "Low Risk"—a species is at low risk of extinction if it is not at a moderate or high level of extinction risk (see "Moderate risk" and "High risk" below). A species may be at low risk of extinction if it is not facing threats that result in declining trends in abundance, productivity, spatial structure, or diversity. A species at low risk of extinction is likely to show stable or increasing trends in abundance and productivity with connected, diverse populations. "Moderate Risk"—a species is at moderate risk of extinction if it is on a trajectory that puts it at a high level of extinction risk in the foreseeable future (see description of "High Risk" below). A species may be at moderate risk of extinction due to projected threats or declining trends in abundance, productivity, spatial structure, or diversity. "High Risk"—a species with a high risk of extinction is at or near a level of abundance, productivity, spatial structure, and/or diversity that places its continued persistence in question. The demographics of a species at such a high level of risk may be highly uncertain and strongly influenced by stochastic or depensatory processes. (Stochastic processes are random processes evolving with time; depensatory processes are density-dependent processes where a decrease in a species' population leads to reduced reproductive success, such as by an increase in the rate of predation on eggs or young, or through the reduced likelihood of finding a mate.) Similarly, a species may be at high risk of extinction if it faces clear and present threats (*e.g.*, confinement to a small geographic area; imminent destruction, modification, or curtailment of its habitat; or disease epidemic) that are likely to create present and substantial demographic risks.

The draft status review report (Newell (2016)) was submitted to independent peer reviewers; comments and information received from peer reviewers were addressed and incorporated as appropriate before finalizing the draft report. The status review report is available on our Web site (see **ADDRESSES** section) and the peer review report is available at *http:// www.cio.noaa.gov/services_programs/ prplans/PRsummaries.html*. Below we summarize information from the report and our analysis of the status of the two guitarfish species. Further details can be found in Newell (2016).

Species Descriptions

Guitarfishes are cartilaginous fishes (class *Chondrichthyes*), in the subclass *Elasmobranchii* (which includes all cartilaginous fishes except chimaeras). They are part of the super order *Batoidea*, and members of the order *Rajiformes*, which also includes skates, sawfishes, electric rays, and rays. *Rajiformes* are characterized by a dorsoventrally depressed body with the anterior edge of the pectoral fin attached to the side of the head (Serena 2005). Guitarfishes are members of the family *Rhinobatidae*, which have a moderately depressed, elongated, shark-like body form, with pectoral fins barely enlarged (compared to other batoids except for sawfish), a subtriangular disk, two sub-equal, well-developed, and well-separated dorsal fins, and an elongated, wedge-shaped snout. Guitarfishes have a stouter tail than all other batoids except sawfishes and torpedo rays (Bigelow & Schroeder 1953; Serena 2005).

Rhinobatos rhinobatos and *Rhinobatos cemiculus* are sympatric species with relatively wide, overlapping ranges in the subtropical waters of the eastern Atlantic and Mediterranean. In the Atlantic both species range from Northern Portugal south to Angola, with *R. rhinobatos* extending slightly farther north into the Bay of Biscay in south Atlantic France. Both species' historical ranges include all Mediterranean countries with the exception of Malta and France, which are only in the range of *R. rhinobatos*. Both species are primarily found in coastal and estuarine, sandy or muddy bottomed habitat from very shallow water to depths of approximately 100 m (Corsini-Foka 2009; Melendez & Macias 2007; Serena 2005). Both species feed on a variety of macrobenthic organisms, including crustaceans, fishes, and mollusks (Basusta *et al*.,, 2007; Enajjar *et al*.,, 2007; Lteif 2015; Patokina & Litvinov 2005).

In terms of reproduction, *Rhinobatos rhinobatos and Rhinobatos cemiculus* are aplacental viviparous species (giving birth to live, free swimming young with embryo nutrition coming from a yolk sac rather than a placental connection). Both species aggregate seasonally to reproduce, with females visiting protected shallow waters to give birth (Capape & Zaouali 1994; Demirhan *et al.*, 2010; Echwikhi *et al.*, 2013; Ismen *et al.*, 2007). As with many other elasmobranchs, females mature later and at greater sizes than males, females reach greater total length, and female fecundity increases with total length (TL) (Capape & Zaouali 1994; Cortés 2000; Demirhan *et al.*, 2010; Enajjar *et al.*, 2008; Ismen *et al.*, 2007). Based on the limited available information, both species seem to be relatively fast growing compared to most elasmobranch species (Başusta *et al.*, 2008; Enajjar *et al.*, 2012)_ENREF_53. Additional species-specific descriptions are provided below.

Common guitarfish (*Rhinobatos rhinobatos*) are khaki-brown colored on their dorsal surface with a white underside (Melendez & Macias 2007). *R. rhinobatos* have rostral ridges that are widely separated over their entire length with the anterior of their nasal lobe level with the inner corner of their nostril. They have a wide posterior nasal flap and spiracles with two moderately developed folds, with the outer fold more prominent. They have no dorsal or anal spines and relatively small thorns present around the inner margin of their orbits, between their spiracles, on their shoulders and along the midline of their discs and tails (Melendez & Macias 2007). There are regional variations in the maximum size and size at maturity of *R. rhinobatos.* TL ranges from 22–185 cm with the heaviest specimen recorded reaching 26.6 kg (Edelist 2014; Ismen *et al.*, 2007). The best available information estimated that 50 percent of females and males reached maturity between 79–87 cm TL and 68–78 cm TL, respectively (Abdel-Aziz *et al.*, 1993; Demirhan *et al.*, 2010; Enajjar *et al.*, 2008), and that gestation lasts 9–12 months with females giving birth to 1–14 pups in the late summer or early fall (see Newell (2016)). The maximum age recorded was 24 years old (Başusta *et al.*, 2008) and *R. rhinobatos* likely matures between 2 and 4 years old (Başusta *et al.*, 2008; Demirhan *et al.*, 2010). For a more detailed discussion of size, age, and reproduction see Newell (2016).

Blackchin guitarfish (*Rhinobatos cemiculus*) have a brown dorsal surface with a white underside and usually a blackish blotch on the snout, especially in juveniles. Their rostral ridges are narrowly separated and nearly join in the front. Their anterior nasal lobes extend little if any and their posterior nasal flaps are narrow. Their spiracle has two well-developed folds of about the same size. They have no anal or dorsal spine and have thorns present around the inner margin of their orbits, between their spiracles, on their shoulders, and along the midline of their disc and tail (Melendez & Macias 2007). There are regional variations in the maximum TL and size at maturity. TL ranges from 32–245 cm with the heaviest specimen recorded reaching 26 kg, although the maximum weight is likely much higher because the 26 kg specimen was only 202 cm TL (Capape & Zaouali 1994; Seck *et al.*, 2004). Based on the best available information, 50 percent of females and males reached maturity between 138–153 cm TL and 112–138 cm TL, respectively (Enajjar *et al.*, 2012; Valadou *et al.*, 2006). The reported litter size varies greatly, but the reported range is 2–24 pups per litter with small litters typical (Capape & Zaouali 1994; Seck *et al.*, 2004; Valadou *et al.*, 2006). *R. cemiculus* is more prolific than *R. rhinobatos,* likely because it reaches a greater size than *R. rhinobatos* (Capape & Zaouali 1994). Gestation lasts between 5–12 months with parturition occurring in the later summer and early fall (Capape & Zaouali 1994; Seck *et al.*, 2004; Valadou *et al.*, 2006). Enajjar *et al.*, (2012) found that males and females in the Gulf of Gabès, Tunisia, matured around 3 and 5 years of age, respectively, and that individuals of the species can live for at least 14 years. No other age data were found for this species. For a more detailed discussion of size, age, and reproduction, see Newell (2016).

Historical and Current Distribution and Population Abundance

Rhinobatos rhinobatos

Historically the common guitarfish was known on all shores of the Mediterranean as well as the coastal eastern Atlantic from the Bay of Biscay (France) to Angola (Melendez & Macias 2007). Throughout its historical Mediterranean range this species has likely always been rare in most of the northwestern Mediterranean, and more common in the Levantine Sea and along the southern shore of the Mediterranean from southern Tunisia to Egypt (Abdel-Aziz *et al.*, 1993; Capapé *et al.*, 2004; Çek *et al.*, 2009; Edelist 2014; Lteif 2015; Saad *et al.*, 2006). Presently *R. rhinobatos* has been extirpated from the northwestern Mediterranean, including the coasts of Spain and France, as well as the Tyrrhenian, Ligurian, and Adriatic Seas (Bertrand *et al.*, 2000; Capapé *et al.*, 2006; Medits 2016a; Notarbartolo di Sciara *et al.*, 2007b). In this now curtailed portion of its range, up until the early 20th century, *R. rhinobatos* was likely only common in the waters around Sicily (Doderlein 1884; Psomadakis *et al.*, 2009) and the Balearic Islands of Spain (Notarbartolo di Sciara *et al.*, 2007b).

R. rhinobatos is present in all Tunisian waters, although less common than *R. cemiculus.* It is more abundant in the southeastern area around the Gulf of Gabès and the Bahiret el Biban, which are areas used by this species for reproduction (Capapé *et al.*, 2004; Echwikhi *et al.*, 2013; Echwikhi *et al.*, 2012; Enajjar *et al.*, 2008). In the Northern and Southern Lagoons near the City of Tunis in the Gulf of Tunis on the northwest coast of Tunisia, *R. rhinobatos* has become common since 2004, in response to environmental restoration of the lagoons (Mejri *et al.*, 2004). Little information was available for the status of *R. rhinobatos* in Libyan waters beyond that they are targeted by fishers (Séret & Serena 2002). In a 2005 report, the Regional Activity Centre for Specially Protected Areas (RAC/SPA) proposed a research program that would focus on eight cartilaginous fishes of Libya, including *R. rhinobatos,* because of their commercial importance and interest in their conservation (RAC/SPA 2005). According to the proposal authors, some species, including guitarfishes, which are now rare or extirpated in other parts of the Mediterranean, are still common in Libyan waters. In neighboring Egypt, *R. rhinobatos* was common in commercial fishery catches in 1990 (Abdel-Aziz *et al.*, 1993). Over the last 10 years, guitarfishes and other elasmobranchs have been increasingly exploited by Egyptian fishers as desirable bycatch species, and recent declines in landings indicate that these populations are currently being overexploited (A. Marbourk, NOS, pers. comm. to B. Newell, NMFS, 21 July, 2016).

North of Egypt, *R. rhinobatos* was considered common in Israeli waters as of 2006, with the largest TL for the species recorded from a female specimen in the area (Edelist 2014; Golani 2006). Lernau and Golani (2004) state, "swarms of *Rhinobatos rhinobatos* are captured with purse seines." Although this statement is not connected to a specific fishing area it appears the authors are either discussing fishing along the Israeli coast or in the nearby Bardawil Lagoon on the Egyptian Sinai Peninsula. *R. rhinobatos* is the most commonly observed elasmobranch in Lebanese fisheries (Lteif 2015). In a study of elasmobranch exploitation in Syria in the early 2000s, *R. rhinobatos* was characterized as a "moderate economically important species either for being caught in little quantities with high efforts in fishing, or for their little demand for human consumption. Or maybe for both reasons" (Saad *et al.*, 2006). By comparison, *R. cemiculus* was characterized as a "very economically important species being caught in plentiful quantities and highly consumable" (Saad *et al.*, 2006). No clarification was given as to whether there is low catch with high effort, or low demand. Regardless, the fact that *R. rhinobatos* was characterized as being of "moderate" economic importance indicates this fish is more than an occasional visitor to Syrian waters. In the Turkish portion of the Levantine Sea (off southeastern Turkey), *R. rhinobatos* is common in fisheries bycatch, including in İskenderun Bay, where, as of 2012, it was less common than *R. cemiculus* (Başusta *et al.*, 2012; Çek *et al.*, 2009). West of İskenderun Bay, based on samples collected in the early 1980s, *R. rhinobatos* is also common in Mersin Bay (Gücü & Bingel 1994), and it was collected in a 2002–2003 survey of the Karataş Coasts (located between İskenderun Bay and Mersin Bay). *R. rhinobatos* has also been recorded in the Gulf of Antalya, west of Mersin Bay (C.

Mancusi, ARPAT, pers. comm. to B. Newell, NMFS, 23 March, 2016). Individuals of all life history stages, including large quantities of pregnant females, have been captured in the Gulf of Gabès and the Bahiret el Biban (Capapé *et al.*, 2004), Alexandria, Egypt (Abdel-Aziz *et al.*, 1993), and in İskenderun Bay (Çek *et al.*, 2009). In the Aegean Sea, which is bound by the east coast of Turkey and the west coast of Greece, *R. rhinobatos* is rare (Corsini-Foka 2009). It was present on a checklist from 1969 (Bilecenoğlu *et al.*, 2014), with one individual reported in 2008 and another in the 1970s (Corsini-Foka 2009), while no occurrences were detected during a 2006–2007 survey of Saroz Bay in the northeastern Aegean (Keskin *et al.*, 2011).

In the Atlantic, north of the strait of Gibraltar, the only records we found of this species were from checklists and museum records from Spain and Portugal (Bañón *et al.*, 2010; Carneiro *et al.*, 2014) and it not is reported in the International Council for the Exploration of the Sea (ICES) DATRAS data base, which is a collection of 45 years' worth of survey data including data collected off the Atlantic coasts of France, Spain, and Portugal (ICES 2016), indicating that they are likely historically rare North of the Strait of Gibraltar.

Along the Atlantic coast of Africa, this species is found from Morocco to Angola. It is likely that this species is rare in Moroccan waters (Gulyugin *et al.*, 2006; Serghini *et al.*, 2008). In West Africa, *R. rhinobatos* has been one of the most common and widely distributed elasmobranchs in Mauritania, Gambia, Guinea, Guinea-Bissau, Senegal, and Sierra Leone, but has become scarce throughout most of this portion of its range in recent decades (Diop & Dossa 2011; M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016). In Mauritania, fishing pressure has driven declines in the average size of guitarfishes landed in the Banc d'Arguin National Park from 1998 to 2007 (Diop & Dossa 2011). Restrictions on elasmobranch fishing in the park have allowed guitarfishes to recover locally but they are still exploited throughout the rest of Mauritanian waters (M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016). In Senegal, guitarfishes are heavily targeted and this fishing pressure has caused local declines in both species, with substantial declines reported over the period of 1990 to 2005 (Diop & Dossa 2011; M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016; Notarbartolo di Sciara *et al.*, 2007a; Notarbartolo di Sciara *et al.*, 2007b).

Rhinobatos rhinobatos occurs in the waters of Guinea-Bissau off the mainland and around the Bijagós Archipelago where it is targeted by fishers (Cross 2015; Fowler & Cavanagh 2005; Kasisi 2004; Tous *et al.*, 1998). In the late 1990s, rapid and substantial declines of *R. rhinobatos* were reported in the Bijagós Archipelago, as specialized and sophisticated fishing teams targeting elasmobranchs for their fins migrated into the area, although previously the area had seen almost no elasmobranch fishing (Tous *et al.*, 1998). In Guinea it is likely that this species is experiencing similar declines to those in Guinea-Bissau, Senegal, and Gambia (M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016). In Sierra Leone, this species is one of the most heavily exploited elasmobranchs (Diop & Dossa 2011). It was recorded from 2008–2010 in a survey by the Sierra Leone Ministry of Fisheries and Marine Resources as well as in industrial and artisanal fishery data (Sierra Leone Ministry of Fisheries and Marine Resources, pers. comm. to M. Miller, NMFS, 11 April, 2016). *Rhinobatos rhinobatos* is listed in an updated checklist of the marine fishes of Cape Verde, an island nation located about 600 km west of Dakar, Senegal. However, the authors of the checklist considered the record of *R. rhinobatos* invalid, stating that they did not know of any records of this species in the Cape Verde Islands (Wirtz *et al.*, 2013).

Little information about the status of *R. rhinobatos* was available throughout the rest of this species' Atlantic range. From January 2009 to December 2010, *R. rhinobatos* was recorded during a study of landings by artisanal fishers based in the Ghanaian villages of Ahwaim and Elmina (Nunoo & Asiedu 2013). *Rhinobatos rhinobatos* is present in Gabon, but is likely less abundant than *R. cemiculus* (G. De Bruyne, Wildlife Conservation Society, Mayumba, pers. comm. to B. Newell, NMFS, 26 June, 2016). *Rhinobatos rhinobatos* was not caught from March 2013 to May 2015 during a study of artisanal fisheries around Mayumba, Gabon (De Bruyne 2015). No information on this species was available from Ghana and Gabon prior to these periods of study. We found no data for *R. rhinobatos* in the following countries, which have coastline in this species' range: Liberia, Cote d'Ivoire, Togo, Benin, Nigeria, Cameroon, Equatorial Guinea, São Tomé and Príncipe, Republic of the Congo, Democratic Republic of the Congo, and Angola.

Rhinobatos cemiculus

Historically, the blackchin guitarfish had a distribution similar to, but slightly more restricted than, *R. rhinobatos*, with its range listed through most of the coastal Mediterranean, and in the eastern Atlantic from Portugal to Angola (Melendez & Macias 2007). In the Mediterranean, there are no records of this species off the coast of France (Capapé *et al.*, 2006), and there are doubts about whether *R. cemiculus* occurred in the Adriatic Sea (Akyol & Capapé 2014). Throughout its historical Mediterranean range, this species has likely always been rare in most of the northwestern Mediterranean, and more common in the Levantine Sea and along the southern shore of the Mediterranean from southern Tunisia to Egypt (Rafrafi-Nouira *et al.*, 2015). Presently all guitarfishes have been extirpated from the northwestern Mediterranean including the coast of Spain, as well as from the Tyrrhenian, Ligurian, and Adriatic Seas (Bertrand *et al.*, 2000; Capapé *et al.*, 2006; Medits 2016a; Notarbartolo di Sciara *et al.*, 2007b). In this now curtailed portion of its range, up until the early 20th century, *R. cemiculus* may have been common in the waters around Sicily (Doderlein 1884; Psomadakis *et al.*, 2009), and frequently occurred around the Balearic Islands of Spain (Notarbartolo di Sciara *et al.*, 2007b).

Rhinobatos cemiculus commonly occur in fishery landings, both as a target species and as bycatch from the waters of the east coast of Tunisia, the north coast of Africa, and the eastern Mediterranean from Israel to southeastern Turkey (Capape & Zaouali 1994; Lteif 2015; Saad *et al.*, 2006). It is fished throughout all of Tunisian waters. It is considered rare along the north coast of Tunisa, although it may become more common in this area due to warming seas (Rafrafi-Nouira *et al.*, 2015) and environmental restoration (Mejri *et al.*, 2004). It has always been abundant in southeastern Tunisia around the Gulf of Gabès and the Bahiret el Biban, where it is more abundant than *R. rhinobatos*, and is known to use these areas during reproduction, including for parturition (Capapé *et al.*, 2004; Echwikhi *et al.*, 2013; Echwikhi *et al.*, 2012; Enajjar *et al.*, 2008).

As with *R. rhinobatos*, little information is available on the status of *R. cemiculus* in Libyan waters beyond that they are targeted by fishers (Séret & Serena 2002), and that they are still common, relative to their occurrence in other parts of the Mediterranean (RAC/SPA 2005). Guitarfishes are consumed in Libya, and in a 2005 proposal for a research program focused on the cartilaginous fishes of Libya, *R. cemiculus* was selected as one of the eight priority species for research because of its commercial importance and interest in its conservation (RAC/SPA 2005). Capapé *et al.*, (1981) reported that an Egyptian museum specimen of *R. cemiculus* originated from the Red Sea, but no other reference to this species occurring in the Red Sea was reported. We found no information on the distribution or abundance of *R. cemiculus* in Mediterranean Egyptian waters, but this fish likely occurs in this area (Capape & Zaouali 1994).

North of Egypt, *R. cemiculus* is considered prevalent in Israeli waters (less common than *R. rhinobatos*), where it is caught as bycatch by commercial fishers (Golani 2006). From December 2012 to October 2014, *R. cemiculus* was the second most common elasmobranch in Lebanese fisheries catches after *R. rhinobatos* (Lteif 2015). In a study of elasmobranch exploitation in Syria in the early 2000s, *R. cemiculus* was characterized as a "very economically important species being caught in plentiful quantities and highly consumable" (Saad *et al.*, 2006).

North of Syria, *R. cemiculus* is one of the most common elasmobranchs in fisheries landings in İskenderun Bay, Turkey (and more abundant than *R. rhinobatos*) (Başusta *et al.*, 2012; Keskin *et al.*, 2011). West of İskenderun Bay, *R. cemiculus* was caught during a 2006 study of shrimp trawl bycatch in Mersin Bay sampling (Duruer *et al.*, 2008). *Rhinobatos rhinobatos*, but not *R. cemiculus*, was collected in a 2002–2003 survey of the Karataş Coasts (Çiçek *et al.*, 2014). In the Aegean Sea, *R. cemiculus* is rare (Corsini-Foka 2009; Filiz *et al.*, 2016). In 2013, two large *R. cemiculus* were caught in trawls in İzmir Bay, Turkey (eastern-central Aegean), which the authors considered a range expansion for this species (Akyol & Capapé 2014). Further expanding the range of this species, in October 2012 one *R. cemiculus* was caught near Bursa, Turkey, in the Sea of Marmara, which connects the Aegean Sea and the greater Mediterranean to the Black Sea (C. Mancusi, ARPAT, pers. comm. to B. Newell, NMFS, 23 March, 2016), although this record has not been reported in peer-reviewed literature.

In the Atlantic, north of the Strait of Gibraltar, the only records we found of this species were from checklists and museum records from Spain and Portugal (Bañón *et al.*, 2010; Carneiro *et al.*, 2014), although Rafrafi-Nouira *et al.*, (2015) noted that north of the Strait of Gibraltar, *R. cemiculus* was only known off Portugal. This species was not reported in the DATRAS data base (ICES 2016), indicating that they have historically been rare north of the Strait of Gibraltar.

Along the Atlantic coast of Africa, this species is found from Morocco to Angola. It is likely rare in Moroccan waters (Gulyugin *et al.*, 2006; Serghini *et al.*, 2008). In West Africa, *R. cemiculus* has been one of most common and widely distributed elasmobranchs in Mauritania, Gambia, Guinea, Guinea-Bissau, Senegal, and Sierra Leone, but it has become scarce throughout most of this portion of its range in recent decades (Diop & Dossa 2011; M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016). In Mauritania, fishing pressure has driven declines in the average size of guitarfishes landed in the Banc d'Arguin National Park from 1998 to 2007, resulting in 95 percent of the landed *R. cemiculus* being smaller than the size at 50 percent maturity (Diop & Dossa 2011). Restrictions on elasmobranch fishing in the park have allowed guitarfishes to recover locally, but they are still exploited throughout the rest of Mauritanian waters (M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016). In Senegal, guitarfishes are heavily targeted, and this has caused local declines in both species, with substantial declines reported over the period of 1990 to 2005 (Diop & Dossa 2011; M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016; Notarbartolo di Sciara *et al.*, 2007a; Notarbartolo di Sciara *et al.*, 2007b).

Rhinobatos cemiculus occurs in the waters of Guinea-Bissau off the mainland and around the Bijagós Archipelago, where they are targeted by fishers (Cross 2015; Fowler & Cavanagh 2005; Kasisi 2004; Tous *et al.*, 1998). *Rhinobatos cemiculus* was one of the elasmobranch species taken in the highest numbers in 1989 during experimental fishing trips (Diop & Dossa 2011). In the late 1990s, rapid and substantial declines of *R. cemiculus* were reported in the Bijagós Archipelago, as specialized and sophisticated fishing teams targeting elasmobranchs for their fins migrated into the area, although previously the area had seen almost no elasmobranch fishing (Tous *et al.*, 1998). In Guinea, just south of Guinea-Bissau, *R. cemiculus* is one of the most important fishery species (Diop & Dossa 2011), and it is likely that this species is experiencing declines similar to those in Guinea, Senegal, and Gambia (M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016). In Sierra Leone, this species is one of the most heavily exploited elasmobranchs (Diop & Dossa 2011). It was recorded from 2008 to 2010 in a survey by the Sierra Leone Ministry of Fisheries and Marine Resources as well as in industrial and artisanal fishery data (Sierra Leone Ministry of Fisheries and Marine Resources, pers. comm. to M. Miller, NMFS, 11 April, 2016). *Rhinobatos cemiculus* is likely not common or exploited in the waters of Cape Verde (Diop & Dossa 2011). Little information about the status of *R. cemiculus* was available throughout the rest of this species' Atlantic range. From January 2009 to December 2010, *R. cemiculus* was not recorded in a study of landings by artisanal fishers based in the Ghanaian villages of Ahwaim and Elmina (Nunoo & Asiedu 2013). *Rhinobatos cemiculus* is present throughout Gabonese coastal waters (G. De Bruyne, Wildlife Conservation Society, Mayumba, pers. comm. to B. Newell, NMFS, 26 June, 2016), and it was reported as bycatch from March 2013 to May 2015 during a study of artisanal fisheries around Mayumba, Gabon (De Bruyne 2015). No information on this species was available from Ghana and Gabon prior to these periods of study. We found no data for *R. cemiculus* in the following countries with coastline in this species' range: Liberia, Cote d'Ivoire, Togo, Benin, Nigeria, Cameroon, Equatorial Guinea, São Tomé and Príncipe, Republic of the Congo, Democratic Republic of the Congo, and Angola.

Summary of Factors Affecting the Two Guitarfish Species

Available information regarding historical, current, and potential threats to these two guitarfishes was thoroughly reviewed (see Newell (2016)). We find that the main threat to these species is overutilization for commercial purposes. This threat is exacerbated by both species' reproductive behavior. Mature adults, including near-term pregnant females, congregate in shallow waters to breed and give birth. This behavior is well understood and exploited by fishers throughout these species' ranges and exposes both species to capture by most demersal fishing gear types (Diop & Dossa 2011; Echwikhi *et al.*, 2013; Echwikhi *et al.*, 2012). Although information on these species' age structure and reproductive capacity is incomplete, it is likely that their reproductive capacity, which may be high compared to some other elasmobranchs, but low compared to most fished species, increases the threat of commercial overutilization to both species. We find that current regulatory mechanisms contribute to the extinction risk of both species because they are inadequate to protect these species from further overutilization. In addition, pollution and development that modifies coastal habitat may be a threat to these species' survival, although the specific effects of these threats are not well studied, so there is significant uncertainty regarding the contribution of pollution and coastal development to the extinction risk of these guitarfishes. We summarize information regarding these threats and their interactions below, with species-specific information where available, and according to the factors specified in section 4(a)(1) of the ESA. Available information does not indicate that recreational fishing, disease, predation, or other natural or manmade factors are operative threats on these species; therefore, we do not discuss these factors further in this finding. See Newell (2016) for a full discussion of all ESA section 4(a)(1) threat categories.

Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Both *R. rhinobatos* and *R. cemiculus* have likely been extirpated from the northwestern Mediterranean. *Rhinobatos rhinobatos* has likely been extirpated from the Mediterranean coasts of Spain and France, as well as the Tyrrhenian, Ligurian, and Adriatic Seas (Bertrand *et al.*, 2000; Capapé *et al.*, 2006; Medits 2016a). *Rhinobatos cemiculus* may never have occurred in the Mediterranean waters of France, but it has been extirpated from the Ligurian and Tyrrhenian Seas, the Balearic Islands, and possibly the Adriatic (it is uncertain if it ever occurred there) (Akyol & Capapé 2014; Medits 2016a; Notarbartolo di Sciara *et al.*, 2007a). Throughout the area where both species have been extirpated, we found almost no information on the life-history of either species, including no mention of the presence of different maturity stages or pregnant females. Based on the lack of available information, it appears that both species were rare throughout much of the area where they have been extirpated, with the exception of the Balearic Islands and the waters off Sicily.

Around the Balearic Islands, both *R. rhinobatos* and *R. cemiculus* were frequently observed until at least the early 20th century (Notarbartolo di Sciara *et al.*, 2007a; Notarbartolo di Sciara *et al.*, 2007b). In the Tyrrhenian Sea, especially around Sicily, *Rhinobatos* spp. was common in commercial trawls in the northern Tyrrhenian as late as the 1960s (Doderlein 1884; Fowler & Cavanagh 2005; Psomadakis *et al.*, 2009). Both species were present daily at the Palermo (northwest Sicily) fish market in the late 19th century, where *R. rhinobatos* was likely more common than *R. cemiculus* (Doderlein 1884). The seasonal influx of *R. rhinobatos* in Sicilian waters (which may also apply to *R. cemiculus*) described by Doderlein (1884) is similar to the seasonal congregation of breeding adults reported in other portions of both species' ranges.

Additionally, Doderlein (1884) reported specimens of *R. cemiculus* that were 170, 180, and 230 cm TL (the largest being male), indicating that these individuals were likely mature. However, there was no discussion of pregnant females, reproduction, or how *R. rhinobatos* and *R. cemiculus* used these areas, so there is significant uncertainty regarding how the loss of the populations in Sicilian and Balearic waters, as well as the loss of populations in the rest of the northwestern Mediterranean, could contribute to the extinction risk of either species.

Although we found no other evidence of extirpations, the best available information indicates significant declines of elasmobranchs in West Africa, with *R. rhinobatos* and *R. cemiculus,* which were once common, becoming scarce. This region has already seen the total or near extirpation of sawfishes and the African wedgefish (Diop & Dossa 2011; Fowler & Cavanagh 2005). Given the similarity of these species (relatively large, dorsoventrally flattened, coastal elasmobranchs) to *Rhinobatos* spp., and the significant fishing pressure in the area, it is reasonable to conclude that *R. rhinobatos* and *R. cemiculus* could face the threat of range curtailment in West Africa in the foreseeable future.

Throughout these species' ranges there is not much information available on the species-specific threats to *R. rhinobatos* and *R. cemiculus* habitat. However, in the Mediterranean, the decline of elasmobranch diversity and abundance is well documented, and is attributed in part to habitat destruction and pollution (Carlini *et al.*, 2002; Cavanagh & Gibson 2007; Melendez & Macias 2007; Psomadakis *et al.*, 2009). Mediterranean ecosystems have been shaped by human actions for millennia, perhaps more so than anywhere else on earth (Bradai *et al.*, 2012). Large species that use coastal habitat, especially those species that use these areas as nursery areas (*e.g., R. rhinobatos* and *R. cemiculus*), are particularly vulnerable in areas of intensive human activity (Cavanagh & Gibson 2007). The semi-enclosed nature of the Mediterranean increases the effects of pollution and habitat degradation on elasmobranch species and, as a result, the status of elasmobranchs may be worse in the Mediterranean than in other regions of the world (Melendez & Macias 2007; Séret & Serena 2002).

The Mediterranean Sea receives heavy metals, pesticides, excess nutrients, and other pollutants in the form of run-off (Melendez & Macias 2007; Psomadakis *et al.*, 2009). As long-lived predators, large elasmobranchs are significant bioaccumulators of pollutants (Melendez & Macias 2007). No information is available on the bioaccumulation of pollutants in the tissues of *Rhinobatos* spp. in the Mediterranean Sea, but other elasmobranchs, such as the spiny dogfish and the gulper shark, have shown high concentrations of toxins (Melendez & Macias 2007). A study of the accumulation of trace metals cadmium, copper, and zinc in fish along the Mauritanian coast showed low levels of bioaccumulation of these metals in the tissues of *R. cemiculus* compared to bony fishes. It should be noted that three specimens of *R. cemiculus* were the only elasmobranchs collected in this study, and that, in contrast with the Mediterranean, the trace metals in the area of the study are thought to be primarily natural in origin (Sidoumou *et al.*, 2005).

Pollution, habitat degradation, and development in the coastal zone are also of concern in some African countries within these species' ranges (Diop & Dossa 2011; Kasisi 2004). While pollution is a concern in portions of both species' ranges, the effects of pollution on elasmobranchs and marine food webs are not well understood (Melendez & Macias 2007). We found no information describing how marine pollution affects *Rhinobatos* spp., so the contribution of marine pollution to these species' extinction risk is unknown.

The significant demersal trawling that occurred and continues to occur throughout the Mediterranean range of the two *Rhinobatos* species (Edelist 2014; FAO 2016b; Sacchi 2008), and to a lesser extent throughout their Atlantic range (Diop & Dossa 2011), has likely altered seafloor morphology (Puig *et al.*, 2012). In some important reproductive areas for *Rhinobatos* spp., such as the southeast coast of Turkey, intense trawling pressure has occurred over recent decades in depths less than 70 m (Çiçek *et al.*, 2014). However, we found no information that this habitat modification has had a direct effect on the abundance or distribution of these two species. Additionally, trawl fishing within three nautical miles of the Mediterranean coast has been prohibited since 2012 in order to protect coastal elasmobranch species (FAO 2016e).

Some information shows that these species are sensitive to habitat modification. Psomadakis *et al.*, (2009) attributed the extirpation of *Rhinobatos* spp. from the northwestern Mediterranean to the combination of centuries of human development and fishing pressure. Additionally, both species returned to the Northern and Southern Tunis Lagoons in Tunisia after large scale restoration of the area (Mejri *et al.*, 2004). Prior to restoration, the lagoons had undergone significant anthropogenic hydrological modification and been extremely polluted from sewage input and industrial waste (Noppen 2003). After restoration was completed in 2001, *R. cemiculus* was recorded for the first time, and *R. rhinobatos,* which had previously been rare, became common (Mejri *et al.*, 2004). Based on the available information, it is likely that pollution and modification of habitat contribute to the risk of extirpation of both species from portions of their range. However, because of the lack of information on the pollution and habitat modification throughout their entire ranges, and because there is no information on the direct effects of these threats to either species, the degree of the contribution of these factors to the extinction risk of both species is unknown at this time.

Overutilization for Commercial Purposes

The primary threat to both of these species is commercial overutilization. This threat is difficult to quantify, as fisheries data on elasmobranch landings throughout both species' ranges has been drastically underreported (Clarke *et al.*, 2006; Diop & Dossa 2011; FAO 2016a). When elasmobranch catches have been reported, it was generally not reported at the species level (Bradai *et al.*, 2012; Echwikhi *et al.*, 2012). However, based on surveys of fishers' knowledge, museum records, and analysis of scientific surveys of the northern Mediterranean, it appears that commercial overutilization has been the main driver of both species' extirpation from the northwestern Mediterranean, and their decline in abundance in other regions (Baino *et al.*, 2001; Bertrand *et al.*, 2000; Capapé *et al.*, 2006; Carlini *et al.*, 2002; Diop & Dossa 2011; Echwikhi *et al.*, 2012; Psomadakis *et al.*, 2009).

The overutilization of these species is not concentrated in one area or fishery. Throughout portions of their ranges, they are, or were until recently, targeted for their fins, meat, or both (G. De Bruyne, Wildlife Conservation Society, Mayumba, pers. Comm. to B. Newell, NMFS, 26 June, 2016; Diop & Dossa 2011; Echwikhi *et al.*, 2012). Throughout their ranges, there is great diversity in fisheries and in the types of gear used (Diop & Dossa 2011; FAO 2016b). As bycatch, *R. cemiculus* and *R. rhinobatos* are particularly exposed to fishing pressure from demersal trawl, gillnet, and longline fisheries (Cavanagh & Gibson 2007; Echwikhi *et al.*, 2013; Echwikhi *et al.*, 2012; FAO 2016d).

In West Africa, both species have been targeted by the shark fin fishery, which has led to both species becoming scarce in this region after a few decades of targeted fishing (Diop & Dossa 2011; Fowler & Cavanagh 2005). The explosion of the Chinese middle class at the end of the last century led to a rapid increase in demand for shark fin soup, a traditional Chinese dish desired for its alleged tonic properties and, most importantly, because it has served as an indicator of high societal status for centuries. Shark fins are one of the highest value seafood products in the world, especially compared to shark meat, which is widely regarded as low value (Dulvy *et al.*, 2014; Hareide *et al.*, 2007b). The value and quality of shark fins are judged by the thickness and length of the ceratotrichia, or fin needles, and based on this valuation system, guitarfishes have some of the most valuable elasmobranch fins (Hareide *et al.*, 2007b).

The majority of the commercial harvest information available for these species in the Atlantic pertains to the FAO Subregional Fisheries Commission (SRFC) member countries: Mauritania, Senegal, Gambia, Guinea, Guinea-Bissau, Sierra Leone, and Cape Verde. Outside of the SRFC countries, we also found information on fisheries in Morocco, Ghana, and Gabon. We found no data for either species in the following countries, which have Atlantic coastline that is considered in one or both species' ranges: France, Spain, Portugal, Liberia, Cote d'Ivoire, Togo, Benin, Nigeria, Cameroon, Equatorial Guinea, São Tomé and Príncipe, Republic of the Congo, Democratic Republic of the Congo, and Angola.

In the SRFC region, elasmobranchs, including *R. rhinobatos* and *R. cemiculus,* have historically been extremely abundant (Diop & Dossa 2011). Prior to the 1970s, elasmobranchs were primarily taken as bycatch and processed for sale to meet local demand. There was a small market for salted and dried elasmobranch meat, based in Ghana that fueled trade for elasmobranch bycatch through the SRFC region, including for guitarfishes caught in Senegal and Gambia. However, compared to other fishery products, shark meat had very low value, so there was little economic incentive to develop a targeted fishery. Elasmobranch fishing in the SRFC region began to grow in Senegal and Gambia in the 1970s, and then, fueled by the growing demand for shark fins, developed into a robust and unsustainable shark fishery by the early 1980s. To supply the shark fin export industry, specialized shark fishing teams became increasingly common in the SRFC region. These teams of artisanal fishers migrate into new areas along the west coast of Africa as local elasmobranch resources become locally overexploited (Diop & Dossa 2011; Ducrocq & Diop 2006). As the fishery became more migratory, the increase in fishing effort drove the need to maximize profits, further encouraging the unsustainable, wasteful practice of finning (Diop & Dossa 2011; Tous *et al.*, 1998). In recent decades the demand for elasmobranch meat, which was once considered a low value product, has grown, which provided additional economic incentive for growth in the shark fishery in the SRFC region (Clarke *et al.*, 2007; Dent & Clarke 2015).

The SRFC subregion's international elasmobranch fishing industry is composed of industrial and artisanal fishing vessels, coastal processing facilities, and a robust trade network. Vessels are owned both by local fishermen and foreign investors (primarily Spanish). Owners have financed improvements in fishing technology (*e.g.* more advanced boats and nets) as yields have declined. Guitarfishes are also targeted from shore, such as by fishers using beach-based "'guitar lines" in Mauritania. In the SRFC region, elasmobranch fishing effort steadily increased since the 1970s, with landings peaking in the early 2000s, and then showing a significant and ongoing drop. Throughout the region (with the exception of Cape Verde, an offshore island nation where neither species are abundant), "resources seem to be fully exploited, if not overexploited, for almost all selachian[1] species" (Diop & Dossa 2011; Ducrocq & Diop 2006). Because *Rhinobatos* spp. have also been heavily targeted for their highly valuable fins in the SRFC region for decades, this status of full or overexploitation likely also applies to guitarfishes in the SRFC region (Diop & Dossa 2011; M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016).

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[1] *i.e.* sharks.

In the SRFC region, Diop and Dossa (2011) report the importance of one or both *R. rhinobatos* and *R. cemiculus* to local elasmobranch fisheries in all member countries except Gambia and Cape Verde. Fishers throughout this region time their fishing activities with the migration patterns and reproductive behavior of both species, targeting guitarfishes when they return to the shallows to give birth (Ducrocq & Diop 2006). In Mauritania, *R. cemiculus* is one of the three elasmobranch species taken in highest numbers (Diop & Dossa 2011; M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016). In Guinea-Bissau and Guinea, *R. cemiculus* is listed as one of the few species listed as "most important landings" and "taken in the highest numbers," respectively. In Sierra Leone, "*Rhinobatos* spp. and *Dasyatis* spp. (stingrays) are found in the highest numbers, both in terms of weight and number." In Senegal, both species, along with coastal sharks, are the main fisheries targets (Diop & Dossa 2011). Diatta *et al.,* (2009) also found that guitarfishes were some of the primary elasmobranchs targeted by the robust artisanal fishery in Senegal, where finning is prevalent, and these fishes were caught when they returned to shallow waters to breed.

While the shark fin industry has been the major driver for elasmobranch declines in the SRFC countries, it is not the sole driver of overutilization of *R. rhinobatos* and *R. cemiculus.* The region has also experienced heavy population shifts in recent decades, primarily from people migrating to the coast, and this has put increased demand on all marine resources. Additionally, fisheries reporting in the area is inadequate, and there is significant bycatch in the industrial fishing industry (Diop & Dossa 2011). In addition to reported harvest, since 1980, the African Atlantic coast has experienced extremely high rates of illegal, unreported, and unregulated (IUU) fishing, including in shallow areas where both guitarfish species are vulnerable to capture (Agnew *et al.,* 2009; Greenpeace 2015).

As a result of the decades of sustained and widespread targeting of guitarfishes and other elasmobranchs in the SRFC region, combined with the increasing overall fishing effort, there has been an overall decrease in catch, with some species, such as sawfishes, lemon sharks and the African wedgefish, almost completely disappearing (Diop & Dossa 2011), and some species, including guitarfishes, becoming scarce (Diop & Dossa 2011; M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016; Ducrocq & Diop 2006). Based on survey and fisher interview data collected by the IUCN Guinea-Bissau Programme and the National Centro de Investigacao Pesqueira Applicada, both guitarfishes were the main targets of specialized fishing teams in Guinea-Bissau, and landings had declined substantially as of the late 1990s (Fowler & Cavanagh 2005; Tous *et al.,* 1998). This fishing pressure also drove down the average size of *R. rhinobatos* landed (Notarbartolo di Sciara *et al.,* 2007b). According to unpublished data from the Senegalese Ministry of Maritime Economy and International Maritime Transportation, guitarfish landings in Senegal have decreased from 4,050 t in 1998 to 821 t in 2005, with a reduction in the overall size of specimens landed (Notarbartolo di Sciara *et al.,* 2007a). Diop and Dossa (2011) reported that, because of overexploitation in the Banc d'Arguin National Park in Mauritania, 95 percent of landed *R. cemiculus* were smaller than their size-at-maturity, which was likely impacting their reproductive capacity. A ban on shark fishing in Banc d'Arguin National Park has allowed guitarfishes to recover within the park's boundaries, but both species are still heavily targeted outside of the park (M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016).

While Diop and Dossa (2011) characterized one or both species as being important, or landed in high numbers, in fisheries in Senegal, Mauritania, and Guinea-Bissau, the authors did not state a time period for these characterizations. As just discussed, significant declines in the overall abundance of guitarfishes have been reported in all of these countries (Diop & Dossa 2011; M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016; Fowler & Cavanagh 2005; Notarbartolo di Sciara *et al.,* 2007a; Notarbartolo di Sciara *et al.,* 2007b) as well as substantial reported declines in landings of larger, more fecund, individuals of both species in Guinea-Bissau, Senegal (Notarbartolo di Sciara *et al.,* 2007a; Notarbartolo di Sciara *et al.,* 2007b) and Mauritania (Diop & Dossa 2011). Similar trends are likely in Guinea and Gambia (M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016). Because of the migratory fisheries in the SRFC countries, and the reported scarcity of guitarfishes throughout the area (Diop & Dossa 2011), it is reasonable to assume similar declines have occurred or will occur in Sierra Leone.

In Morocco, both species are likely rare; they are not targeted, but at least *R. rhinobatos* occurs as demersal trawl bycatch (Notarbartolo di Sciara *et al.,* 2007b). We found no information on the commercial exploitation of *Rhinobatos* spp. in Morocco but, in general, Moroccan fisheries are likely in a state of overexploitation after years of intense and extremely underreported fishing activity by foreign vessels (Belhabib *et al.,* 2012b; Jouffre & Inejih 2005). In Ghana, where the artisanal fishing industry is an important and entrenched part of the economy, the demand for dried and salted elasmobranch meat was an early driver of the regional elasmobranch industry (Diop & Dossa 2011; Ducrocq & Diop 2006; Nunoo & Asiedu 2013), and *R. rhinobatos,* but not *R. cemiculus,* was recently reported in artisanal fisheries landings (Nunoo & Asiedu 2013). The demersal fisheries resources of Ghana have been "operating under stress during the last decades" (Nunoo & Asiedu 2013). Artisanal fishers from Ghana, as well as from neighboring Togo and Benin, have migrated to other countries' fishing grounds along the west coast of Africa, likely because fishing grounds in these fishers' countries have been overexploited, overcrowded, or both (De Bruyne 2015; Diop & Dossa 2011).

In Gabon, both species are present in coastal waters, and are targeted by artisanal fishers using specialized gear for their meat and to supply the black market fin trade, which is connected to the West African fin trade. Both species are also targeted by recreational fishers (G. De Bruyne, Wildlife Conservation Society, Mayumba, pers. comm. to B. Newell, NMFS, 26 June, 2016). In the area of the village of Mayumba in southwest Gabon, *R. cemiculus* was the most frequent batoid species captured by artisanal fishers from 2014 to 2015 (*R. rhinobatos* is not mentioned). This catch included no mature females, which was noted by the author as an indicator that fishing has had a negative impact on the reproductive capacity of this species in the area. Although the author noted the absence of pregnant females, he did not discuss whether pregnant females had previously been recorded in the area. "Sea fishing" began around Mayumba in the 1950s with the arrival of fishers from Ghana, Benin, and Togo, many of whom had been crowded out of fishing grounds in the Republic of the Congo. Until recently, this area experienced unsustainable industrial and IUU fishing. In this area, there has also long been subsistence fishing by locals in the

Banio Lagoon, where sharks and rays were prevalent 30 years ago, but today are almost impossible to catch (De Bruyne 2015). Based on this information, it appears that overutilization has caused a decline in abundance and reproductive capacity of *R. cemiculus* in at least part of Gabonese waters.

In contrast with the relatively recent and rapid exploitation of guitarfishes in the African Atlantic, primarily driven by the demand for shark fins, finning is not widely practiced in the Mediterranean (Hareide *et al.*, 2007a; Serena 2005). Instead, in the Mediterranean these species have been impacted by the centuries of sustained fishing pressure coupled with recent increases in fishing effort and fishing technology advances (Ferretti *et al.*, 2008; Psomadakis *et al.*, 2009). As evidence of both species' decline, *R. rhinobatos* and *R. cemiculus* have been listed on Annex II: List of Endangered or Threatened Species of the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD Protocol) of the Barcelona Convention since 2012. The SPA/BD Protocol prohibits the landing of these species in the Mediterranean and requires that they "must be released unharmed and alive to the highest extent possible." We found no studies on the survival rates of guitarfishes after being released from fishing gear interactions, so the potential of this requirement to reduce fishing mortality is unknown.

General Fisheries Commission for the Mediterranean (GFCM) recommendation GFCM/36/2012/3, which is associated with the SPA/BD Protocol (see *Inadequacy of Existing Regulatory Mechanisms*), also prohibits trawling within three nautical miles of the shoreline, greatly reducing the likelihood that these coastal fish will be caught as bycatch. Recommendation GFCM/36/2012/3 also prohibits finning and the landing of elasmobranchs without their heads and skins, thus protecting these fish from illegal sale (FAO 2016e)(Hareide *et al.*, 2007a; Serena 2005). We found no information on the current level of IUU fishing on these species in the Mediterranean, so it is difficult to assess the impact of these prohibitions. Recent information from Tunisia, Lebanon, and Egypt indicates that the fisheries in these countries are inadequately regulated (Echwikhi *et al.*, 2013; Echwikhi *et al.*, 2012; Lteif 2015; A. Marbourk, NOS, pers. comm. to B. Newell, NMFS, 21 July, 2016; Samy-Kamal 2015).

Regardless of the efficacy of the SPA/BD Protocol prohibitions, the historical fishing pressure on *R. rhinobatos* and *R. cemiculus* has driven declines in abundance throughout much of the Mediterranean (Baino *et al.*, 2001; Bertrand *et al.*, 2000; Capapé *et al.*, 2006; Diop & Dossa 2011; Notarbartolo di Sciara *et al.*, 2007a; Notarbartolo di Sciara *et al.*, 2007b; Psomadakis *et al.*, 2009). The area has a long history of fishing pressure, which has not abated in recent decades (Ferretti *et al.*, 2008). Better technology and increased fishing effort, including increased benthic continental shelf and slope trawling over the last 50 years, has resulted in the decline of many elasmobranch species (Bradai *et al.*, 2012). In the northwestern Mediterranean, sustained and intensive fishing pressure has been a main driver of the extirpation of *Rhinobatos* spp. (Bradai *et al.*, 2012; Capapé *et al.*, 2006; Psomadakis *et al.*, 2009; Sacchi 2008). The highest concentration of fishing vessels in the Mediterranean occurs in the Eastern Mediterranean Sea and the Ionian Sea GFCM subregions, which make up the majority of the current Mediterranean ranges of *Rhinobatos* spp. Turkey, which appears to have some of the largest concentrations of *R. cemiculus* along its southern coast, also has the most fishing vessels with 16,447 vessels (17.74 percent of vessels in the Mediterranean). However, some of these vessels fish in the Black Sea, where neither species is found, or in the Aegean Sea, where these species are rare (FAO 2016b).

Between 1970 and 1985, reported Mediterranean and Black Sea chondrichthyan landings (which includes both guitarfishes) grew from 10,000 t to 25,000 t, and then declined to about 7,000 t annually in 2008 despite growing fishing effort (Bradai *et al.*, 2012; Cavanagh & Gibson 2007; Hareide *et al.*, 2007). During this time, Tunisia and Turkey were two of the most prolific Mediterranean elasmobranch fishing countries. As of 2007, there were six Mediterranean elasmobranchs affected by targeted fisheries. Historically, many more species had been targeted or landed in large quantities, but this number has been reduced because these fisheries are no longer commercially viable (Cavanagh & Gibson 2007; FAO 2016d; Ferretti *et al.*, 2008). In a few areas in the Mediterranean, *R. rhinobatos* and *R. cemiculus* are or were targeted or considered a valuable secondary catch. Additionally, the global demand for elasmobranch meat has grown rapidly in recent decades, with the reported production of meat and fillets growing from approximately 40,000 tons in 1985 to 121,641 tons in 2004 (Clarke *et al.*, 2007; Dent & Clarke 2015), potentially providing economic incentive to retain these species as targeted or incidental catch.

The primary Mediterranean area where *R. rhinobatos and R. cemiculus* have been fished is the waters of Tunisia, where seasonal artisanal fishers target elasmobranchs with gillnets and longlines when they move into shallow waters in the spring and summer (Echwikhi *et al.*, 2013; Echwikhi *et al.*, 2012). *Rhinobatos* spp. meat is sold in local markets and the skin is used for drumheads by local players (Capape & Zaouali 1994). In Tunisian waters *R. cemiculus* is landed in greater numbers than *R. rhinobatos* (Capape & Zaouali 1994; Echwikhi *et al.*, 2013; Echwikhi *et al.*, 2012), although species-specific data and reliable discard data are largely unavailable (Echwikhi *et al.*, 2012). Data on fishing vessels are underreported, especially in Tunisia and Morocco. However, based on the available data, the Tunisian fleet is composed of 12,826 reported vessels, or 14.91 percent of the 92,734 vessels reported in the Mediterranean and Black Sea, making it the third largest Mediterranean and Black Sea fishing fleet. Since 1970, when total fisheries landings in Tunisia were about 25,000 tons, there has been a steady increase in landings, reaching an average of 101,400 t from 2000to 2013. Additionally, Tunisia has one of the youngest fishing fleets in terms of vessel age, indicating a relatively recent increase in fishing capacity. As is the case throughout the Mediterranean, the vast majority of the Tunisian fishery is composed of artisanal vessels (FAO 2016b). While elasmobranch landings have dropped overall in southern Tunisia (Echwikhi *et al.*, 2013; Echwikhi *et al.*, 2012), an assessment from the Workshop on Stock Assessment of Selected Species of Elasmobranchs in the GFCM area found that the southern Tunisian *R. cemiculus* stock was actually underfished from 2001–2007 (GFMC:SAC 2012).

Targeted fishing for guitarfishes in Tunisia likely began in the 1970s to mid-1980s (Capapé *et al.*, 2004; Echwikhi *et al.*, 2013). The majority of Tunisian elasmobranch catches have been from the Gulf of Gabès (Bradaï *et al.*, 2006; Echwikhi *et al.*, 2013; Echwikhi *et al.*, 2012), where general elasmobranch landings and batoid landings steadily increased during the 1990s, peaked in 2002, and decreased from 2003 to 2008 (trend data are not available after 2008) (Echwikhi *et al.*, 2012). Guitarfishes were targeted with special gillnets called "garracia," with catches peaking in the spring and summer when females move into shallow waters to gestate and give birth. Adults, juveniles, and neonates have also been caught as bycatch in demersal fish and shrimp trawls (Bradaï *et al.*, 2006). In a study of elasmobranch gillnet fishing in the Gulf of Gabès from 2007 to 2008, *R. cemiculus* was the most abundant elasmobranch caught. *R. cemiculus* and *R. rhinobatos* were 52 percent and 6.81 percent of the total elasmobranch catch, respectively. Female *R. cemiculus* (40 percent mature) and *R. rhinobatos* (48 percent mature) were more common than males. The authors of this study noted that *R. cemiculus* is particularly susceptible to capture in bottom gillnets because of its shape and schooling behavior (Echwikhi *et al.*, 2012).

In recent years, Gulf of Gabès fishermen who had targeted grouper using demersal longlines have shifted to targeting elasmobranchs as grouper abundance has declined, although in this fishery elasmobranchs were still reported as bycatch (Echwikhi *et al.*, 2013). The first study of elasmobranch catches in this longline fishery, conducted from 2007 to 2008, found that *R. cemiculus* was the most abundant elasmobranch, with *R. cemiculus* and *R. rhinobatos* composing 31.7 percent and 11.2 percent of the elasmobranch catch, respectively. Mature, pregnant females dominated the *R. cemiculus* catch, while males and females were about equal for *R. rhinobatos,* with slightly more mature individuals than juvenile individuals caught. This study found that longline fishing effort during this time period was ''considerable'' (Echwikhi *et al.*, 2013). Enajjar *et al.*, (2008) found a decrease in the overall TL and TL at 50 percent maturity for male and female *R. rhinobatos* in southern Tunisia, compared to the results reported by Capape *et al.*, (1975, 1997). The reported decrease in *R. rhinobatos,* compared to the relatively recent GFCM:SAC (2012) stock assessment that found *R. cemiculus* was underfished in this area, may indicate that only the Tunisian population of *R. rhinobatos* is experiencing levels of fishing pressure that contribute to its risk of extinction. There is significant uncertainty with this conclusion because of the limited information available.

Just east of the Tunisian border, there are artisanal gillnet and longline elasmobranch fisheries based in Tarwah, Libya, that, as of 2000, primarily targeted sharks of the family *Carcharhinidae,* with guitarfishes and angelsharks retained as associate target species (Lamboeuf *et al.*, 2000). This information was reported in Appendix VI of Lamboeuf *et al.*, (2000), which provided an example of the project's database printout, rather than a complete picture of guitarfish retention in Libya, and we found no additional information on guitarfish catch in this country. According to the RAC/SPA (2005) research proposal, guitarfishes have been traditionally consumed in Libya, and some species that have declined in the greater Mediterranean, including guitarfishes, are still relatively common in Libyan waters. The effects of targeted fishing in Libya on the extinction risk of these species are unknown at this time.

Along the eastern Mediterranean, guitarfishes are illegally targeted in Lebanon by artisanal fishers. From December 2012 to October 2014, *R. rhinobatos* was the most common elasmobranch in Lebanese fisheries catches, followed by *R. cemiculus,* and both have had significant economic value. Fishing pressure in Lebanon is greatest in the north, where it has already impacted elasmobranch diversity (Lteif 2015). In a study of elasmobranch exploitation in Syria in the early 2000s, *R. cemiculus* was characterized as a ''very economically important species being caught in plentiful quantities and highly consumable,'' whereas *R. rhinobatos* was characterized as a ''moderate economically important species either for being caught in little quantities with high efforts in fishing, or for their little demand for human consumption. Or maybe for both reasons'' (Saad *et al.*, 2006). It is unclear if *R. cemiculus* is more common or if there is a higher demand for its meat over that of *R. rhinobatos,* but these data indicate that both species were either targeted or welcomed as secondary catch in Syria. Overall fisheries landings in Lebanon and Syria increased since the 1970s, but their reported landings only make a small fraction of the overall Mediterranean catch (FAO 2016c).

Throughout their entire Mediterranean ranges, *R. cemiculus* and *R. rhinobatos* have long been exposed to pressure as bycatch (Bradai *et al.*, 2012). *Rhinobatos cemiculus* is one of the most commonly landed elasmobranchs in İskenderun Bay, Turkey (and more abundant than *R. rhinobatos*) (Başusta *et al.*, 2012; Keskin *et al.*, 2011), where the coastal area is heavily fished, exposing mature, breeding individuals to capture when they migrate to shallow waters (Başusta *et al.*, 2008). *Rhinobatos* spp. are not commercially important species in Turkey (Keskin *et al.*, 2011), but Çek *et al.*, (2009) reported that *R. rhinobatos* has been exploited by bottom trawlers in İskenderun Bay since 1990, and it is consumed locally. The same is likely true for *R. cemiculus.* After Egypt, Turkey has the highest number of registered trawlers in the Eastern Mediterranean, with 599 vessels (FAO 2016b). While some of these trawlers are concentrated in the Black Sea (FAO 2016b), the southeastern waters of Turkey, including İskenderun Bay, have been intensely fished for decades and have shown obvious signs of decline in biodiversity and fish abundance (Çiçek *et al.*, 2014).

In Egypt, Mediterranean fisheries landings have generally been growing since the 1970s, as fishing technology has advanced and fishing effort has increased. There have been periods where landings dropped despite continued increases in fishing efforts (FAO 2016c; Samy-Kamal 2015). As a result there has been an increase in the landings of and demand for cartilaginous fishes bycatch, with guitarfishes (not reported at the species level) composing the majority of these landings, primarily as bycatch from shrimp trawls. Prior to 2005, shark and ray bycatch were usually discarded. From 2005 to 2006, landings of cartilaginous fishes jumped from around 500 tons to over 3,000 tons. Over the last 10 years, this production has remained high, although recently it decreased from over 3,000 tons annually in 2010 and 2011, to 1,843 tons in 2014 in spite of sustained fishing effort (A. Marbourk, NOS, pers. comm. to B. Newell, NMFS, 21 July, 2016). Most of the landings in Egypt occur in the Nile Delta region, which is highly suitable for trawling and includes Alexandria, where *R. rhinobatos* is known to aggregate in shallow waters to give birth (Abdel-Aziz *et al.*, 1993; Samy-Kamal 2015). Within this region, almost 80 percent of the cartilaginous fish production is landed at two ports, Alexandria and Borg El Burullus (A. Marbourk, NOS, pers. comm. to B. Newell, NMFS, 21 July, 2016). Wild-caught fisheries in Egypt have been regulated for decades, but these regulations have been under-enforced, as the government has focused on developing the booming aquaculture industry. Additionally, regulations have not been updated to reflect the GFCM recommendations, which are apparently also not being enforced. This lack of enforcement has resulted in rampant IUU fishing in Egyptian waters, including unsustainable trawling and the use of illegal fishing gear (Samy-Kamal 2015). The lack of fishing regulations and enforcement has resulted in widespread declines in Egyptian fisheries, including in elasmobranch populations, and is likely also affecting neighboring countries, as Egyptian fishers are known to illegally fish in Libyan waters (A. Marbourk, NOS, pers. comm. to B. Newell, NMFS, 21 July, 2016).

In the waters of Cyprus, there was a large increase in coastal trawl fishing effort in the late 1980s. From 1985 to 1990, there was a spike in elasmobranch capture, primarily of dogfish, skates, and rays, followed by a sharp decline in capture after 1990. In response to a government fishing permit buy-back program, trawling effort has reduced substantially since the early 2000s (Hadjichristophorou 2006). In Israel, reported landings are low, approximately at the levels reported for Syria and Lebanon, and have been decreasing for decades (FAO 2016c), although Edelist (2014) considered the soft-bottomed habitat off Israel to be under intensive fishing pressure. Guitarfish are caught as bycatch by local fishermen, but there is little market for elasmobranch products because they are not kosher, thus their consumption is forbidden by Jewish law. Elasmobranch species are primarily caught as bycatch by local fishermen using trawls and bottom long-lines, and also purse seines and trammel nets (Golani 2006). *Rhinobatos rhinobatos* are considered common in the area, while *R. cemiculus* is prevalent but less abundant than *R. rhinobatos* (Edelist 2014; Golani 2006).

The magnitude of the threat to *R. rhinobatos* and *R. cemiculus* from commercial overharvest is impossible to fully assess because of the lack of fisheries data, especially at the species level, from all countries in which these species occur. However, the best available information shows (1) fishery driven extirpation of *Rhinobatos* spp. from the northwestern Mediterranean (Capapé *et al.*, 2006; Psomadakis *et al.*, 2009); (2) decreasing elasmobranch landings due to decades of technological advances and increased fishing effort (Cavanagh & Gibson 2007; Diop & Dossa 2011; Melendez & Macias 2007; Séret & Serena 2002); (3) substantial decreases in the abundance of both species in West Africa (Diop & Dossa 2011); (4) considerable fishing effort in demersal fisheries concentrated in coastal areas where both species, especially reproductive individuals, are particularly vulnerable to capture (Çiçek *et al.*, 2014; Diop & Dossa 2011; Echwikhi *et al.*, 2013; Echwikhi *et al.*, 2012; Samy-Kamal 2015); (5) sustained targeting of these species as commercially important species (Diop & Dossa 2011; Echwikhi *et al.*, 2013; Echwikhi *et al.*, 2012; Lteif *et al.*, 2016; Saad *et al.*, 2006); and (6) evidence of fishery driven size reduction (Diop & Dossa 2011; Enajjar *et al.*, 2012). Based on this information, we conclude that overharvest from industrial and artisanal commercial fisheries is contributing significantly to the extinction risk of both *R. rhinobatos* and *R. cemiculus* throughout their ranges.

Inadequacy of Existing Regulatory Mechanisms

There are some regional and national regulatory mechanisms that impact the conservation status of these species. In 2009, both species were listed on SPA/BD Protocol Annex III: List of Species Whose Exploitation is Regulated, which was adopted under the Barcelona Convention in 1995 (Bradai *et al.*, 2012). In 2012, both species were uplisted to Annex II: List of Endangered or Threatened Species (S. de Benedictis, GFCM Secretariat, pers. comm. to B. Newell, 12, May, 2016). The protocol charges all parties with identifying and compiling lists of all endangered or threatened species in their jurisdiction, controlling or prohibiting (where appropriate) the taking or disturbance of wild protected species, and coordinating their protection and recovery efforts for migratory species, among other measures that are likely less relevant to these species (RAC/SPA 1996). Currently, all coastal Mediterranean countries where these species occur are contracting parties to the SPA/BD Protocol (European Commission 2016). Further, since 2012, both species have been protected by GFCM recommendation GFCM/36/2012/3. This recommendation prohibits the finning of elasmobranchs or the beheading or skinning of elasmobranchs before landing, and it prohibits trawling in the first three nautical miles off the coast or up to the 50 m isobaths (whichever comes first). Additionally, Annex II elasmobranch species cannot be retained on board, transshipped, landed, transferred, stored, sold or displayed or offered for sale, and must be released unharmed and alive to the extent possible (GFCM/36/2012/3). Any capture of these species in the GFCM area of competence, which includes all national and high seas waters of the Mediterranean and Black Seas (FAO 2016f), is considered IUU fishing (S. de Benedictis, GFCM Secretariat, pers. comm. to B. Newell, 12, May, 2016).

In the Mediterranean, the efficacy of these and other protections is unclear, but it appears that countries have historically been slow to adopt and enforce the SPA/BD Protocol protections (Serena 2005). Italy, Greece, and Lebanon have promulgated regulations in accordance with the SPA/BD Protocol to protect species listed in Annex II (Bradai *et al.*, 2012; Lteif 2015), Tunisia has restricted the retention of rays and skates less than 40cm, and all cartilaginous fishes are protected in Israel (Bradai *et al.*, 2012). In Lebanon, these regulations are neither being followed nor enforced (Lteif 2015). Historically, monitoring of the Mediterranean fleet has been negligible (Séret & Serena 2002), and the data on cartilaginous fishes have not been reported at the species level (Echwikhi *et al.*, 2012; Serena 2005). Vessel, bycatch, and discard data from artisanal fisheries, which primarily operate along the coast and make up 80 percent of the vessels in the Mediterranean, are difficult to obtain and likely underreported (FAO 2016c, 2016d). Echwikhi *et al.*, (2012) and Echwikhi *et al.*, (2013) describe the nature of artisanal gillnet and longline fisheries in Tunisia and the Mediterranean as "unregulated." In Lebanon, Turkey, and Tunisia the artisanal sector makes up well over 80 percent of the total vessels, and no data were available for Syria (FAO 2016c), increasing the likelihood that fisheries in these important portions of *Rhinobatos* spp. range are underregulated and catches are underreported.

In Egypt, which is also an important part of the range of at least *R. rhinobatos,* the wild catch fisheries are underregulated as the government has focused most of its resources on supporting the booming aquaculture industry (Samy-Kamal 2015). This lack of regulation and enforcement has led to widespread overfishing in Egyptian waters, where both guitarfish species have been retained as profitable bycatch species since 2005, and Egyptian fishers are known to illegally fish in Libyan waters because of the overexploited state of local Egyptian fisheries. Additionally, the focus on aquaculture production has resulted in the pollution of coastal brackish lakes, which degrades coastal ecosystems (A. Marbourk, NOS, pers. comm. to B. Newell, NMFS, 21 July, 2016).

In the Atlantic African countries, as in the Mediterranean, artisanal fishing makes up a huge, growing proportion of the fishing activity. Until recently, this fishing sector has lacked species-specific data and strong management or regulations (De Bruyne 2015; Diop & Dossa 2011; Nunoo & Asiedu 2013). Along the Atlantic coast of Africa, all of the SRFC countries have passed regulations that offer some protection to either or both species. Cape Verde, Guinea, Gambia, and Sierra Leone have all banned finning. Mauritania has banned all elasmobranch fishing (except for houndshark) in Banc d'Arguin National Park since 2003. Guinea and Sierra Leone have introduced elasmobranch fishing licenses. Guinea-Bissau dismantled elasmobranch fishing camps in the Bijagos Archipelago and banned elasmobranch fishing in all marine protected areas (MPAs). Senegal established size limits for *R. cemiculus* (106 cm for males and 100 cm for females). However, all of the SRFC countries lack adequate technical and financial resources for monitoring and management, and regulations at the country level are not very strict and lack regional coordination (Diop & Dossa 2011). Whether these regulatory protections put in place in the SRFC countries are reducing the extinction risk of these species is unknown at this time.

In Gabon, a national marine planning effort called "Gabon Bleu," which was established in 2012, seeks to improve management of marine resources across different stakeholder groups, including artisanal and industrial fishing. The country's 2005 Fisheries Code had established regulations that were not being followed, with reported non-compliance including the disconnection of vessel monitoring systems and the use of illegal monofilament nets by artisanal fishers. In 2012, under Gabon Bleu, all fishing activity was suspended, and all fishers who wished to resume work were required to sign an agreement that clearly defined the regulations and required their participation in fisheries research. Several arrests were made as a result of a crackdown on IUU fishing that included increased surveillance (De Bruyne 2015). Additionally, both species are considered "sensitive species" and cannot be targeted by fishers. Unfortunately, these regulations have not eliminated the black market for fins, so guitarfishes are still being targeted by artisanal fishers and illegally finned by demersal trawl fishers (G. De Bruyne, Wildlife Conservation Society, Mayumba, pers. comm. to B. Newell, NMFS, 28 June, 2016). In Mayumba National Park, only artisanal fishers have been allowed to operate, and sharks are no longer targeted (De Bruyne 2015). Recent efforts to improve monitoring of artisanal catches have also been made in Ghana (Nunoo & Asiedu 2013). Republic of the Congo, which shares Gabon's southern border, banned all shark fishing along its entire coastline in 2001 (Marine Conservation Institute 2016), although we found no information on the enforcement of this ban.

IUU fishing by foreign fleets is also a major challenge for sustainable fisheries management in Africa. The west coast of Africa has experienced some of the highest amounts of IUU fishing in the world for decades (Agnew *et al.*, 2009). Historically, EU vessels had fished unsustainably off African countries (Agnew *et al.*, 2009; Belhabib *et al.*, 2012a), but recent regulatory updates, such as the reform for the European Union Common Fisheries Policy (CFP), have curbed these practices (Greenpeace 2015). Currently, the biggest source of IUU fishing in Atlantic African waters, in particular the SRFC region, is China, whose African distant water fishing fleet has swelled from 13 vessels in 1985, to 462 vessels in 2013 (Greenpeace 2015). Chinese vessels, which negotiate fishing agreements with African countries, have been documented trawling in shallow prohibited areas, underreporting catch, using illegal fishing gear, misreporting vessel specifications (including gross tonnage), and tampering with vessel monitoring systems (Greenpeace 2015). Currently, it appears that many West African coastal states lack the regulatory and enforcement capacity to adequately deal with this issue (Greenpeace 2015).

We found no regulatory information for Morocco, Liberia, Cote d'Ivoire, Togo, Benin, Nigeria, Cameroon, Democratic Republic of the Congo, and Angola. Overall, we found little information on the effectiveness of the current regulations in countries along the west coast of Africa and the Mediterranean, so it is difficult to assess how these regulations are impacting the extinction risk of both species. However, we do know that in the African Atlantic there has been rapid growth of unregulated or underregulated exploitation of both species. In addition, throughout both species' ranges IUU fishing is still prevalent, and there is an abundance of coastal, artisanal fishers, who can be difficult to regulate because of the novelty of efforts to regulate and manage fishers that have long been undermanaged or not regulated at all. Because of these factors, as well as the high catchability and low reproductive potential of these species, we conclude that the inadequacy of existing regulatory mechanisms is likely contributing significantly to the extinction risk of both *R. rhinobatos* and *R. cemiculus*. Although the 2012 SPA/BD Protocol Annex II listing and other current regulations may, in time, provide sufficient protection to reduce these species' risk of extinction, the current uncertainty associated with the enforcement of these restrictions is too great to conclude these protections are adequate to prevent overutilization.

Extinction Risk

Although there is no quantitative analysis of either species' abundance over time, and data for many demographic characteristics of *R. rhinobatos* and *R. cemiculus* are lacking, the best available data indicate that these species currently face a moderate risk of extinction due to their inherent demographic vulnerabilities, coupled with commercial overutilization and the inadequacy of regulations of commercial fisheries in their ranges. As defined in the status review (see Newell (2016)), a species is considered to be at a moderate risk of extinction when it is on a trajectory that puts it at a high level of extinction risk in the foreseeable future. In this case, we define the foreseeable future as 15–20 years, which is a reasonable amount of time to project the continued threat of overutilization as countries throughout both species' ranges develop and begin to enforce relevant regulations. Additionally, given the relatively low productivity of these species, it will likely take more than one generation for these species to recover. This foreseeable future corresponds roughly to three generation times of *R. cemiculus* (Enajjar *et al.*, 2012). In this case, because of the lack of life-history data, we simply define the generation time of *R. cemiculus* as the age when the average female reaches sexual maturity (5.09 years).

Rhinobatos rhinobatos

The common guitarfish faces demographic risks that significantly increase its risk of extinction in the foreseeable future. Although there is no species-specific quantitative analysis of *R. rhinobatos* abundance over time, the best available information (including survey data, interviews with fishers, and anecdotal accounts) indicates that this species has likely undergone significant declines throughout most of its range, with no evidence to suggest a reversal of these trends, with the exception of a few, extremely localized examples. Based on survey data and historical records, this species once occurred throughout the entire coastal northwestern Mediterranean, including as a common species off the Balearic Islands and Sicily, but it has been extirpated for decades throughout this entire area. In the Mediterranean, strong fishing pressure on this species, both as a targeted species and as bycatch, likely still occurs in Tunisia, Lebanon, southeast Turkey, Egypt, and Libya. In Africa, substantial and relatively recent declines have occurred in Mauritania, Senegal, Gambia, Guinea-Bissau, and Sierra Leone, all countries where this species was one of the most common elasmobranch species only a few decades ago. This species is also targeted illegally for its fins in Gabon, and IUU fishing is likely rampant throughout most of its African Atlantic range.

The limited productivity data on *R. rhinobatos* suggests this species may be relatively fast-growing and productive compared to other elasmobranchs. However, compared to most fished species, such as bony fishes, this species is slow-growing and has low productivity. Additionally, aspects of this species' reproductive strategy make it inherently vulnerable to overexploitation. This species is long-lived, and larger, older individuals are the most productive. Because this species migrates into shallow waters to give birth and breed, the breeding population of this species is very vulnerable to fishing capture and, as a result, a decline of the average size at maturity and rate of maturity in catches has been reported in many of the portions of this species' range where data are available. Information on spatial structure, connectivity, and diversity is unavailable for this species. However, differences in maximum TL, size at maturity, and reproductive timing throughout this species' range, combined with evidence of extirpated populations from areas that have not been recolonized after decades, suggest there may be isolated populations that contribute to the genetic diversity of this species.

In conclusion, although there is significant uncertainty regarding the current abundance of this species, the best available information indicates that the species has suffered substantial declines in many portions of its range where it was once common. Throughout almost all of this species' range, the threat of overutilization from industrial and artisanal fishing continues. Given the past evidence of fishery-driven extirpation in areas where this species was once common, and the still-practiced targeting of mature, breeding individuals, which has likely reduced the reproductive potential of these species, we find that continued fishing pressure poses a significant risk of endangering this species with extinction in the foreseeable future. Additionally, the regulations and conservation measures in place are likely inadequate to reverse the decline of this species. In summary, based on the best available information and the above analysis, we conclude that *R. rhinobatos* is presently at a moderate risk of extinction throughout its range.

Rhinobatos cemiculus

The blackchin guitarfish faces demographic risks that significantly increase its risk of extinction in the foreseeable future. Although there is no species-specific quantitative analysis of *R. cemiculus* abundance over time, the best available information (including survey data, interviews with fishers, and anecdotal accounts) indicates that this species has likely undergone significant declines throughout most of its range, with no evidence to suggest a reversal of these trends, with the exception of a few, extremely localized examples. Based on survey data and historical records, this species once occurred throughout much of the coastal northwestern Mediterranean, likely as a common species off the Balearic Islands and Sicily, but it has been extirpated for decades throughout this entire area. In the Mediterranean, strong fishing pressure on this species, both as a targeted species and as bycatch, likely still occurs in Tunisia, Lebanon, southeast Turkey, Egypt, and Libya. In Africa, substantial and relatively recent declines have occurred in Mauritania, Senegal, Gambia, Guinea-Bissau, and Sierra Leone, all countries where this species was one of the most common elasmobranch species only a few decades ago. This species is also targeted illegally for its fins in Gabon, and IUU fishing is likely rampant throughout most of its African Atlantic range.

The limited productivity data on *R. cemiculus* suggests this species may be relatively fast-growing and productive compared to other elasmobranchs. However, compared to most fished species, such as bony fishes, this species is slow-growing and has low productivity. Additionally, aspects of this species' reproductive strategy make it inherently vulnerable to overexploitation. This species is long-lived and larger, older individuals are the most productive. Because this species migrates into shallow waters to give birth and breed, the breeding population of this species is very vulnerable to fishing capture and, as a result, a decline of the average size at maturity and rate of maturity in catches has been reported in many of the portions of this species' range where data are available. Information on spatial structure, connectivity, and diversity is unavailable for this species. However, differences in maximum TL, size at maturity, and reproductive timing throughout this species' range, combined with evidence of extirpated populations from areas that have not been recolonized after decades, suggest there may be isolated populations that contribute to the genetic diversity of this species.

In conclusion, although there is significant uncertainty regarding the current abundance of this species, the best available information indicates that the species has suffered substantial declines in many portions of its range where it was once common. Throughout almost all of this species' range, the threat of overutilization from industrial and artisanal fishing continues. Given the past evidence of fishery driven extirpation in areas where this species was once common, and the still-practiced targeting of mature, breeding individuals, which has likely reduced the reproductive potential of this species, we find that continued fishing pressure poses a significant risk of endangering this species with extinction in the foreseeable future. Additionally, the regulations and conservation measures in place are likely inadequate to reverse the decline of this species. In summary, based on the best available information and the above analysis, we conclude that *R. cemiculus* is presently at a moderate risk of extinction throughout its range.

Conservation Efforts

Throughout the ranges of *R. rhinobatos* and *R. cemiculus,* we found no efforts that are dedicated specifically to the conservation of these species. However, there are some efforts in portions of their ranges that may have a positive effect on the status of these species. These include recently developed management plans and protections from harvest and habitat modification in national parks and MPAs.

All SRFC countries except Gambia have adopted, or integrated into their fisheries management plans, a National Plan of Action for the Conservation and Management of Sharks (NPOA-Sharks) as part of the Sub-Regional Plan of Action for the Conservation of Sharks (SRPOA-Sharks) (Diop & Dossa 2011). With assistance from the International Union for the Conservation of Nature's Shark Specialist Group (IUCNSSG), these plans were developed under the recommendations of the FAO International Plan of Action for the Conservation and Management of Sharks (IPOA–SHARKS). IPOA–SHARKS seeks to ensure conservation and sustainable management of sharks with emphasis on quality data collection for management purposes (IUCNSSG 2016). In the SRFC, these plans are still in the early stage of implementation, and it remains to be seen how effective they will be in minimizing the extinction risk of *R. rhinobatos* and *R. cemiculus.* Additionally, all of the SRFC countries lack adequate technical and financial resources for monitoring and management, and regulations at the country level are not very strict and lack regional coordination (Diop & Dossa 2011). There are no NPOA-Sharks developed for the other African nations in these species' Atlantic ranges (IUCNSSG 2016). All European countries have adopted the EU Plan of Action (EUPOA Sharks) but we could find little information on conservation actions associated with this plan.

The GFMC is one of the only FAO Regional Fisheries Management Organizations (RMFOs) with the competence to adopt spatial management measures in the high seas. However, many of these protections have focused on the deep sea (FAO 2016e), offering little conservation value to either species. In the early 2000s, Cyprus initiated a fishing license buy-back program, which likely reduced trawl impact on these species (Hadjichristophorou 2006), although we found little information on either species' status in Cyprian waters, so we cannot evaluate the conservation benefit of this action.

The Regional Activity Centre for Specially Protected Areas (RAC/SPA) and the Network of Marine Protection Area Managers in the Mediterranean (MedPAN) have been working with a diverse network of partners to establish a network of well-connected, well-managed MPAs that protect at least 10 percent of the Mediterranean Sea while representing the sea's biodiversity (Gabrié *et al.,* 2012). The Gabrié *et al.,* (2012) report, entitled "The Status of Marine Protected Areas in the Mediterranean Sea," found that, as of 2012, only 4.6 percent of the Mediterranean surface (114,600 km^2) was protected by MPAs, with these areas mostly concentrated in the coastal zone, predominantly in the northern basin where these species are rare or have been extirpated. Two Mediterranean ecoregions that are important to both species, the Tunisian plateau and the Levantine Sea, were found to be "markedly under-represented." Management of MPAs throughout the Mediterranean was found to be weak, with many MPAs lacking dedicated managers and management plans and financial resources, and having a low surveillance levels, with only northwestern MPAs reporting a sufficient budget to effectively manage. Additionally, the level of ecosystem protection varies throughout the Mediterranean MPAs. For example, most are not "no-take" zones, so artisanal and recreational fishers still have access to many protected areas.

There are also MPAs on the West Coast of Africa that might impact or have already impacted the status of these two guitarfish species. In the Banc d'Arguin National Park in Mauritania, the use of specialized gear such as guitarfish nets as well as the targeting of shark and ray species has been prohibited since 2003 (Diop & Dossa 2011). This allowed the local guitarfish populations to recover, but both species are still targeted outside of the park (M. Ducrocq, Parcs Gabon, pers. comm. to J. Shultz, NMFS, 21 June, 2016). Guinea-Bissau has banned shark fishing in all of its MPAs, including the Bijagos Archipelago, which includes important areas for both species (Cross 2015; Diop & Dossa 2011). Mayumba National Park in Gabon, where at least *R. cemiculus* is found, has recently implemented gear restrictions and no longer allows industrial fishing (De Bruyne 2015). There are also other MPAs that dot the west coast of Africa, but they collectively cover only a small fraction of both species' ranges (MPAtlas 2016).

Proposed Determination

There is significant uncertainty regarding the status of the current populations of both *R. rhinobatos* and *R. cemiculus,* but both species may still be relatively common, although very likely below their historical population levels, in Tunisia, Israel, Lebanon, Syria, and southeastern Turkey. Based on this information, and the best available scientific and commercial information, as summarized here and in Newell (2015), we find that neither *Rhinobatos* species is currently at high risk of extinction throughout their entire ranges. However, both species are at moderate risk of extinction. We assessed the ESA section 4(a)(1) factors and conclude that *R. rhinobatos* and *R. cemiculus* face ongoing threats of overutilization by fisheries and inadequate existing regulatory mechanisms throughout their ranges. Both species have also suffered a curtailment of a large portion of their historical ranges. These species' natural biological vulnerability to overexploitation and present demographic risks (declining abundance, decreasing size of reproductive individuals, and low productivity) are currently exacerbating the negative effects of these threats. Further, ongoing conservation efforts are not adequate to improve the status of these species. Thus, both species are likely to become endangered throughout their ranges in the foreseeable future. We therefore propose to list both species as threatened under the ESA.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery plans (16 U.S.C. 1533(f)); concurrent designation of critical habitat, if prudent and determinable (16 U.S.C. 1533(a)(3)(A)) and consistent with implementing regulations; Federal agency requirements to consult with NMFS under section 7 of the ESA to ensure their actions do not jeopardize the species or result in adverse modification or destruction of critical habitat should it be designated (16 U.S.C. 1536); and, for endangered species, prohibitions on taking (16 U.S.C. 1538). Recognition of the species' plight through listing promotes conservation actions by Federal and state agencies, foreign entities, private groups, and individuals.

Identifying Section 7 Conference and Consultation Requirements

Section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and NMFS/USFWS regulations require Federal agencies to consult with us to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. Section 7(a)(4) (16 U.S.C. 1536(a)(4)) of the ESA and NMFS/USFWS regulations also require Federal agencies to confer with us on actions likely to jeopardize the continued existence of species proposed for listing, or that result in the destruction or adverse modification of proposed critical habitat of those species. It is unlikely that the listing of these species under the ESA will increase the number of section 7 consultations, because these species occur outside of the United States and are unlikely to be affected by Federal actions.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary (16 U.S.C. 1532(3)). Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, critical habitat shall not be designated in foreign countries or other areas outside U.S. jurisdiction (50 CFR 424.12(h)).

The best available scientific and commercial data as discussed above identify the geographical areas occupied by *R. rhinobatos* and *R. cemiculus* as being entirely outside U.S. jurisdiction, so we cannot designate critical habitat for these species.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, NMFS and FWS published a policy (59 FR 34272) that requires NMFS to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. Because we are proposing to list the *R. rhinobatos* and *R. cemiculus* as threatened, no prohibitions of section 9(a)(1) of the ESA will apply to these species.

Protective Regulations Under Section 4(d) of the ESA

We are proposing to list *R. rhinobatos* and *R. cemiculus* as threatened under the ESA. In the case of threatened species, ESA section 4(d) leaves it to the Secretary's discretion whether, and to what extent, to extend the section 9(a) "take" prohibitions to the species, and authorizes us to issue regulations necessary and advisable for the conservation of the species. Thus, we have flexibility under section 4(d) to tailor protective regulations, taking into account the effectiveness of available conservation measures. The section 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These section 9(a) prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Because neither species has ever occupied U.S. waters, and the United States has no known commercial or management interest in either species, we propose to not apply any section 9(a) prohibitions to either species.

Public Comments Solicited

To ensure that any final action resulting from this proposed rule to list the *R. rhinobatos* and *R. cemiculus* as threatened will be as accurate and effective as possible, we are soliciting comments and information from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties on information in the status review and proposed rule. Comments are encouraged on these proposals (See **DATES** and **ADDRESSES**). We must base our final determination on the best available scientific and commercial information. We cannot, for example, consider the economic effects of a listing determination. Before finalizing this proposed rule, we will consider the comments and any additional information we receive, and such information may lead to a final regulation that differs from this proposal or result in a withdrawal of this listing proposal. We particularly seek:

(1) Information concerning the threats to the *Rhinobatos* species proposed for listing;

(2) Taxonomic information on the species;

(3) Biological information (life history, genetics, population connectivity, etc.) on the species;

(4) Efforts being made to protect the species throughout their current ranges;

(5) Information on the commercial trade of the species;

(6) Historical and current distribution and abundance and trends for the species; and

(7) Any of the above information on either or both species from the following countries, from which we have very little information: Morocco, Liberia, Cote d'Ivoire, Ghana, Togo, Benin, Nigeria, Cameroon, Equatorial Guinea, São Tomé and Príncipe, Republic of the Congo, Democratic Republic of the Congo, Angola, Algeria, and Syria.

We request that all information be accompanied by: (1) Supporting documentation, such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

Role of Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing a minimum peer review standard. We solicited peer review comments on the draft common guitarfish and blackchin guitarfish status review report (Newell (2016)) from three scientists familiar with both guitarfish species. We received and reviewed these peer review comments, and incorporated them into both the draft status review report for the common guitarfish and blackchin guitarfish and this proposed rule. Peer reviewer comments on the draft status review are summarized in the peer review report, which is available at: *http://www.cio.noaa.gov/services_programs/prplans/PRsummaries.html.*

References

A complete list of references used in this proposed rule is available upon request (see **ADDRESSES**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this proposed rule does not have significant federalism effects and that a federalism assessment is not required. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, this proposed rule will be given to the relevant governmental agencies in the countries in which the species occurs, and they will be invited to comment. We will confer with the U.S. Department of State to ensure appropriate notice is given to all foreign nations within the ranges of both species. As the process continues, we intend to continue engaging in informal and formal contacts with the U.S. State Department, giving careful consideration to all written and oral comments received.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: September 12, 2016.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend 50 CFR part 223 as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, paragraph (e), add entries for two species in alphabetical order by common name under the "Fishes" table subheading to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA Rules
Common name	Scientific name	Description of listed entity			
* * * * * * *					
FISHES					
* * * * * * *					
Guitarfish, blackchin	*Rhinobatos cemiculus.*	Entire species	[**Federal Register** citation and date when published as a final rule].	NA	NA
Guitarfish, common	*Rhinobatos rhinobatos.*	Entire species	[**Federal Register** citation and date when published as a final rule].	NA	NA
* * * * * * *					

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

[FR Doc. 2016–22450 Filed 9–16–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 160614520–6520–01]

RIN 0648–XE686

Endangered and Threatened Wildlife and Plants: Proposed Rule To List the Maui's Dolphin as Endangered and the South Island Hector's Dolphin as Threatened Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, propose to list the Maui's dolphin (*Cephalorhynchus hectori maui*) as endangered and the South Island Hector's dolphin (*C. hectori hectori*) as threatened under the Endangered Species Act (ESA). We have reviewed the best available scientific and commercial data and completed a comprehensive status review for these two subspecies of Hector's dolphin (*C. hectori*). The Maui's dolphin faces serious demographic risks due to critically low abundance, a low population growth rate, a restricted range, low genetic diversity, and ongoing threats such as bycatch in commercial and recreational gillnets. We have determined Maui's dolphin is currently in danger of extinction throughout its range and, therefore, meets the definition of an endangered species. The relatively more abundant and more widely distributed South Island Hector's dolphin has experienced large historical declines and is expected to continue to slowly decline due to bycatch and other lesser threats, such as disease and impacts associated with tourism. We have determined that this subspecies is not currently in danger of extinction throughout all or a significant portion of its range, but is likely to become so within the foreseeable future; and therefore, it meets the definition of a threatened species. Both subspecies occur only in New Zealand. We are authorized to designate critical habitat within U.S. jurisdiction only, and we are not aware of any areas within U.S jurisdiction that may meet the definition of critical habitat under the ESA. Therefore, we are not proposing to designate critical habitat. We are soliciting public comments on our status review report and proposal to list these two subspecies.

DATES: Comments on this proposed rule must be received by November 18, 2016. Public hearing requests must be made by November 3, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0118, by either of the following methods:

- *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0118,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Lisa Manning, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910, USA.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

You can find the petition, status review report, **Federal Register** notices, and the list of references electronically on our Web site at *http://www.nmfs.noaa.gov/pr/species/petition81.htm.*

FOR FURTHER INFORMATION CONTACT: Lisa Manning, NMFS, Office of Protected Resources, *lisa.manning@noaa.gov*, (301) 427–8466.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2013, we received a petition from WildEarth Guardians to list 81 marine species or populations as endangered or threatened species under the ESA. We determined that the petition had sufficient merit for further consideration, and status reviews were initiated for 27 of the 81 species or populations, including the Hector's dolphin (*Cephalorhynchus hectori;* 78 FR 63941, October 25, 2013; 78 FR 66675, November 6, 2013; 78 FR 69376, November 19, 2013; 79 FR 9880, February 21, 2014; and 79 FR 10104, February 24, 2014). This document addresses the proposed determination for the Hector's dolphin. The findings and relevant **Federal Register** notices for the other species and populations can be found on our Web site at *http://www.nmfs.noaa.gov/pr/species/petition81.htm.*

Listing Determinations Under the ESA

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a "species" under the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines a "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Maui's dolphin, *C. hectori maui,* and the South Island (SI) Hector's dolphin, *C. hectori hectori,* have been formally recognized as subspecies (Baker et al. 2002, Pichler 2002); and thus, each meets the ESA definition of a "species."

Section 3 of the ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" and a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." We interpret an "endangered species" to be one that is presently in danger of extinction. A "threatened species," on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened species and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

When we consider whether a species might qualify as threatened under the ESA, we must consider the meaning of the term "foreseeable future." It is appropriate to interpret "foreseeable future" as the horizon over which predictions about the conservation status of the species can be reasonably relied upon. The foreseeable future considers the life history of the species, habitat characteristics, availability of data, particular threats, ability to predict threats, and the reliability to forecast the effects of these threats and future events on the status of the species under consideration. Because a species may be susceptible to a variety of threats for which different data are available regarding the species' response to that threat, or which operate across different time scales, the foreseeable future is not necessarily reducible to a particular number of years.

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened due to any one or a combination of the following five threat factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. We are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species' status and after taking into account efforts being made by any state or foreign nation to protect the species.

In assessing the extinction risk of these two subspecies, we considered demographic risk factors, such as those developed by McElhany et al. (2000), to organize and evaluate the forms of risks. The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our previous status reviews (see *http://www.nmfs.noaa.gov/pr/species* for links to these reviews). In this approach, the collective condition of individual populations is considered at the species level (or in this case, the subspecies level) according to four demographic viability factors: Abundance and trends, population growth rate or productivity, spatial structure and connectivity, and genetic diversity. These viability factors reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk.

Scientific conclusions about the overall risk of extinction faced by Maui's dolphin and the SI Hector's dolphin under present conditions and in the foreseeable future are based on our evaluation of the subspecies' demographic risks and section 4(a)(1) threat factors. Our assessment of overall extinction risk considered the likelihood and contribution of each particular factor, synergies among contributing factors, and the cumulative impact of all demographic risks and threats on each subspecies.

Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing determination for a species, to take into consideration those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect the species. Therefore, prior to making a listing determination, we also assess such protective efforts to determine if they are adequate to mitigate the existing threats.

Status Review

Status reviews for Maui's dolphin and the SI Hector's dolphin were completed by NMFS staff from the Office of Protected Resources. To complete the status reviews, we compiled the best available data and information on the subspecies' biology, ecology, life history, threats, and conservation status by examining the petition and cited references, and by conducting a comprehensive literature search and review. We also considered information submitted to us in response to our petition finding. A single draft status review report was prepared for the two subspecies and submitted to three independent peer reviewers; comments and information received from peer reviewers were addressed and incorporated as appropriate into the draft report. The draft status review report (cited as Manning and Grantz 2016) is available on our Web site (see **ADDRESSES** section). In the sections below, we provide information from the report regarding threats to and the status of each subspecies.

Subspecies Descriptions

The Hector's dolphin is one of the world's smallest dolphins and occurs only in the coastal waters of New Zealand. Hector's dolphins have short and stocky bodies, no external beak, and a relatively large fluke. They are easily distinguished by their distinctive black, white, and gray color patterns and their rounded dorsal fin, which has a shallowly sloping anterior edge and a convex posterior edge, and is unique to the genus (Dawson 2009). Lifespan is thought to be about 20 years (Slooten 1991, Secchi et al. 2004b), and several dolphins have been aged to a minimum of 22 years based on photo-identification data (Rayment et al. 2009a, Webster et al. 2009). Hector's dolphins have a varied diet that includes cephalopods, crustaceans, and small fish species; however, relatively few prey species appear to comprise the bulk of their diet. Stomach content analysis indicates that common prey species include red cod (*Pseudophycis bachus*), ahuru (*Auchenoceros punctatus*), arrow squid (*Nototodarus* sp.), sprat (*Sprattus* sp.), sole (*Peltorhamphus* sp.), and stargazer (*Crapatalus* sp., Miller et al. 2013).

Females typically have their first calf at 7–9 years of age, and males likely reach sexual maturity at 6–9 years of age (Slooten 1991, Gormley 2009). Calving occurs in the austral spring and early summer, generally from November to February (Slooten and Dawson 1988, Slooten and Dawson 1994). Calves remain with their mothers for 1 to 2 years, although 2 years appears to be more common (Slooten and Dawson 1994). Females typically produce single calves every 2 to 4 years (Slooten and Dawson 1994), which gives a yearly birth rate between 0.33 and 0.5. Fecundity (*i.e.,* the number of female offspring per female per breeding season) has been estimated as ranging from 0.165 to 0.250 (Secchi et al. 2004b, Gormley 2009).

Hector's dolphins make few audible sounds, and their repertoire consists mainly of high frequency (112–130k Hz) clicks of either one or two short pulses (*i.e.,* usually less than 200 μs for single pulses and less than 400 μs for double pulses, Dawson 1988a). Analyses of recorded vocalizations suggest Hector's dolphins use their vocalizations for fine discrimination, locating prey, and communicating, rather than large-scale navigation, for which lower frequency echolocation is required (Dawson 1988a, Dawson 1991a).

Available data indicates that Hector's dolphins have small home ranges and high site fidelity (Bedjer and Dawson 2001, Bräger et al. 2002, Rayment et al. 2009a, Oremus et al. 2012). Based on multiple analyses of photo-identification data and genetic recapture data, the along-shore home range appears to be similar for both subspecies and is typically less than 50 km (Bräger et al. 2002, Rayment et al. 2009a, Oremus et al. 2012). Home ranges also do not appear to differ between males and females (Bräger et al. 2002, Rayment et al. 2009a).

Historically, Hector's dolphins are thought to have been present along almost the entire coastlines of both the North and South Islands of New Zealand (Cawthorn 1988, Russell 1999, Pichler 2002, MFish and DOC 2007a). The two subspecies probably became initially separated by the opening of Cook Strait during the late Pleistocene and Holocene interglacial periods, and this isolation was likely maintained through behavioral mechanisms such as natal philopatry and small home ranges (Pichler 2002, Baker et al., 2002, Dawson 2009). Currently, Maui's dolphins occur along the northwest coast of the North Island, between Maunganui Bluff in the north and Whanganui in the south (Currey et al. 2012). Occasional sightings and strandings have also been reported from areas farther south along the west coast as well as in areas such as Hawke Bay on the east coast of the North Island (Baker 1978, Russell 1999, Ferreira and Roberts 2003, Slooten et al. 2005, MFish and DOC 2007a, Du Fresne 2010). The SI Hector's dolphin currently has a fragmented distribution around the South Island (Dawson et al. 2004, Rayment et al. 2011b) and consists of at least three genetically distinct, regional populations (Pichler 2001, Pichler 2002, Hamner et al. 2012a). SI Hector's dolphins are most abundant around Banks Peninsula, Cloudy Bay, and Cliffords Bay on the east coast and along the central west coast. Distinct and localized populations also occur on the south coast in Te Waewae Bay, Toetoe Bay, and Porpoise Bay (Dawson and Slooten 1988b, Clement et al. 2011, Hamner et al. 2012a, Rodda 2014, Mackenzie and Clement 2014). The connectivity between these regional populations, especially the south coast populations, appears to be limited (Bejder and Dawson 2001, Hamner et al. 2012a). Hector's dolphins do not appear to occur offshore of or within the deep water fiords of Fiordland, although they have been sighted there on rare occasions (Dawson and Slooten 1988b, MFish and DOC 2007a).

Hector's dolphins are typically sighted within about 20 nautical miles (nmi; 37.0 km) of the shore and in water less than 100 m deep (Slooten et al. 2005, Mackenzie and Clement 2014, Rayment et al. 2011b, Mackenzie and Clement 2016). For the North Island, an extensive review by Du Fresne (2010) of both published scientific surveys and unpublished opportunistic sightings data indicates that Maui's dolphins are most frequently found within 4 nmi (7.4 km) of the coast but do occasionally occur at least as far as 7 nmi (13.0 km) offshore. Off the South Island, differences in distribution patterns have been observed for the west and east coasts that may be driven in part by differences in bathymetry or location of the shelf break. On the west coast, the 100 m isobath is always within 13 nmi (24.1 km) of the coast, and in some places as close as 5 nmi (9.3 km); whereas, off Banks Peninsula on the east coast, the 100 m isobath is 16 to 30 nmi (29.6 to 55.6 km) offshore (Rayment et al. 2011b). SI Hector's dolphins are typically within 8 nmi (14.8 km) from shore on the east coast of the South Island and within 3 nmi (5.6 km) from shore on the west coast (Rayment et al. 2010b, 2011b, Mackenzie and Clement 2013, Mackenzie and Clement 2016). However, SI Hector's dolphins have been sighted at least occasionally as far as about 20 nmi (37.0 km) from shore on both coasts (Rayment et al. 2010b, 2011b, MacKenzie and Clement 2016).

Seasonal changes in this nearshore distribution are evident for at least some populations of Hector's dolphins, with distributions often extending farther from shore in the winter relative to the warmer months. For example, based on aerial surveys that extended as far as 20 nmi offshore (37.0 km) of Banks Peninsula and were conducted over 3 years (2002, 2004, and 2005), Rayment et al. (2010b) found that winter sightings extended as far as 18.2 nmi (33.6 km) offshore, compared to 16.3 nmi (30.2 km) in summer; and, while only 7 percent of all dolphins were sighted beyond the 50 m isobath in summer, 44 percent of all dolphins were sighted beyond the 50 m isobath in winter. Slooten et al. (2005) report a similar change in distribution for Maui's dolphins between summer and winter aerial surveys conducted in 2004/2005. Similar seasonal changes in SI Hector's dolphin distribution relative to shore and water depth have also been detected in comparisons of summer and winter sightings data for the west coast of the South Island; however, the observed seasonal shift on the west coast is less dramatic relative to that on the east coast (Rayment et al. 2011b, Mackenzie and Clement 2014).

Summary of ESA Section 4(a)(1) Factors Affecting Maui's Dolphin

Available information regarding historical, current, and potential threats to Maui's dolphins was thoroughly reviewed and is discussed in detail in the status review report (Manning and Grantz 2016). We summarize information regarding these threats below according to the factors specified in section 4(a)(1) of the ESA.

In August 2007, the New Zealand Department of Conservation (DOC) and the Ministry for Primary Industries (MPI, formerly called the Ministry of Fisheries or MFish) released a draft Threat Management Plan (TMP) for Hector's dolphins. This plan describes the nature and level of actual and potential threats to Maui's dolphins, as well as strategies to address those threats. In addition, in June 2012, DOC and MPI convened a risk assessment workshop to inform their review of the Maui's dolphin portion of the TMP. The results of this semi-quantitative risk assessment are available in the report by Currey et al. (2012). The report identifies, evaluates, and rates threats to Maui's dolphins based on scoring by an expert panel. Both the TMP and the risk assessment report greatly informed our assessment, as summarized below.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Threats to the habitat of Maui's dolphins include pollution, mining, oil and gas development activities, acoustic disturbance (Currey et al. 2012).

Persistent chemical pollutants are a concern for many cetacean species, which theoretically can accumulate high concentrations of contaminants due to their longevity, high trophic-level, and naturally high blubber content (Stockin et al. 2010). Contaminants are also specifically a concern for Hector's dolphins due to the dolphins' coastal distribution and thus close proximity to agricultural and industrial activities. Toxicological studies of contaminants, such as polychlorinated biphenyls (PCBs) and organochlorine (OC) pesticides, are limited for Maui's dolphins, and studies on emerging contaminants, such as brominated flame retardant (PBDEs) and perfluorinated chemicals, have yet to be done. Numerous studies on other cetacean species have linked contaminants, such as heavy metals, PCBs, and OC pesticides, with biological impacts, including endocrine disruption, reproductive impairment, immune suppression, and elevated infectious disease (*e.g.*, Fujise et al. 1988, Kuiken et al. 1994, Jepson et al. 2005, O'Hara and O'Shea 2001, Schwacke et al. 2002, Wells et al. 2005). Stockin et al. (2010) examined PCB and OC contaminant loads in stranded or entangled Hector's dolphins (n=27, SI Hector's dolphins; n=3, Maui's dolphins) sampled from 1997 to 2009. Results indicated high concentrations of these chemicals in both subspecies, and a roughly two-fold increase in levels of OC pesticides than had been previously reported for Hector's dolphins by Jones et al. (1999). However, as noted by Stockin et al. (2010), no PCB concentrations were above thresholds associated with reproductive and immunological effects (Stockin et al. 2010).

Pollution in the form of plastic marine debris from both marine and land-based sources can accumulate in, and degrade, Maui's dolphins' habitat. Plastics and other synthetic, non-biodegradable materials in the marine environment create the potential for entanglement, injury, and ingestion. Although data are lacking to evaluate whether and the extent to which this threat is impacting Maui's dolphins, Currey et al. (2012) did identify plastics as being likely to affect population trends over the next 5 years. Plastic bags have been identified as a concern in particular, because they may be mistaken for squid, a common prey item for Maui's dolphins.

Interest in marine minerals mining along the North Island of New Zealand has been growing in recent years, with prospecting and exploration occurring mainly from Manukua Harbor south to New Plymouth (Thompson 2012). Exploration activities have mainly targeted iron sands or titanomagnetite (Thompson 2012). According to New Zealand Petroleum and Minerals (NZPM), which is the government agency responsible for issuing mining permits for New Zealand's oil, gas and mineral resources, demand and exploration for petroleum (oil and gas) is also increasing, and multiple areas within the range of Maui's dolphins are covered under existing prospecting, exploration, and mining permits. Mineral mining activities involving the large scale removal of sediment from the seabed are likely to lead to relatively long term (3–10 year) changes to benthic community composition, thereby altering prey availability and benthic topography (Thompson 2012). Other potential, unintended side-effects include the mobilization and accidental spilling of contaminants and exposure to greater levels of vessel traffic (Thompson 2012). Acoustic disturbance, such as from seismic surveys, sonar, and drilling activities, also poses a potential threat to Maui's dolphins, because it may have negative physical or physiological effects, such as shifts in hearing thresholds, and may disrupt normal behaviors, including navigating, migrating, and feeding (Gordon et al. 2003; Thompson 2012).

The extent to which Maui's dolphins are currently being impacted by these and other habitat-related threats is assumed to be small. These threats have been characterized as having mainly sub-lethal effects, and combined, may currently be responsible for less than 4.5 percent of all Maui's dolphin mortalities (Currey et al. 2012). However, it is probable that Maui's dolphin habitat will become increasingly degraded as a result of pollution and acoustic and benthic disturbances due to increasing human pressure and demand for mineral and petroleum resources (MFish and DOC 2007b).

Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Overutilization of Maui's dolphins for commercial, recreational, scientific, or educational purposes does not appear to pose a significant threat to Maui's dolphin. Maui's dolphins have not been exploited commercially; although, Baker (1978, citing Abel et al. 1971) noted that, between 1969 and 1972, a few Hector's dolphins were taken for live exhibition at Marineland of New Zealand. It's not clear which subspecies was taken. Hector's dolphins have also apparently been taken for food, oil, and bait; however, the extent to which this occurred is unknown (Pichler et al. 2003).

There is some evidence that commercial dolphin-watching vessels and swim-with-dolphin operations cause behavioral changes in Hector's dolphins (Bejder et al. 1999, Constantine 1999, Martinez et al. 2012). Such tourism activities, however, seem to occur at a relatively low intensity within the range of Maui's dolphins and instead are much more concentrated elsewhere—mainly the Bay of Islands and the Bay of Plenty on the east coast of the North Island and various locations of the South Island (Martinez 2010b). Although tourism and the potential related impacts of boat strike, noise, and displacement were identified as threats in the risk assessment completed by Currey et al. (2012), the expert panel did not think these threats were likely to affect population trends within the next 5 years.

Disease or Predation

Predation of Hector's dolphins by several shark species, such as seven-gill sharks (*Notorhynchus cepedianus*) and blue sharks (*Prionace glauca*), is known to occur; however, predation rates are not known (Slooten and Dawson 1988). Predation was not considered to be posing a threat to Maui's dolphins in the recent risk assessment by Currey et al. (2012).

Disease is another known source of mortality for Hector's dolphins. In their evaluation, Currey et al. (2012) categorized natural disease, stress-induced disease, and domestic animal vectors as posing threats that are likely to have population level effects on Maui's dolphins within the next 5 years. Prevalence of infectious disease and associated behavioral impacts and mortality rates have not been well studied in Hector's dolphins, so the significance of this source of mortality remains unclear. Recently, Roe et al. (2013) found that 7 of 28 Hector's dolphins (25 percent), including 2 of 3 Maui's dolphins, collected between 2007 and 2011 and later necropsied had died as a result of *Toxoplasma gondii* infection. Of the 22 dolphins for which a definitive cause of death was established, a total of ten (45 percent) were found to have died from infectious disease (*T. gondii* infections, bacterial infection, or fungal infection). These findings suggest that infectious disease may be a significant source of mortality for Hector's dolphins. In addition, while toxoplasmosis is typically a secondary disease in cetaceans, resulting in symptoms in immunosuppressed individuals rather than healthy individuals, there was no evidence of immunosuppression in these cases (Roe et al. 2013). This finding suggests that Hector's dolphins may be particularly susceptible to toxoplasmosis. Roe et al. (2013) also note that toxoplasmosis may have other effects beyond direct mortality and could be an important cause of neonatal loss. The source of the *T. gondii* infection could not be determined in this study, but exposure may be occurring through freshwater run-off from terrestrial sources (Roe et al. 2013). Overall, while data remain limited for Maui's dolphins, the available data suggest that disease, especially toxoplasmosis, is posing a threat to Maui's dolphins.

Inadequacy of Existing Regulatory Mechanisms

A number of regulatory measures have been put in place to address bycatch of Maui's dolphins. Although data on bycatch of Maui's dolphins are limited, fishery-related mortality has been identified as posing a significant threat to Maui's dolphins. The risk assessment completed by Currey et al. (2012) attributed 95.5 percent of the estimated human-caused mortalities forecasted to occur over the next 5 years to legal and illegal fishing-related activities. This translated into an estimated median of 4.97 Maui's dolphin mortalities per year due to fishing activities (95 percent confidence interval (CI) = 0.28—8.04). To help inform the risk assessment of Currey et al. (2012), Wade et al. (2012) calculated the Potential Biological Removal (PBR) for Maui's dolphins and estimated it as one dolphin mortality every 10 to 23 years. PBR, which is a management tool specific to the U.S. Marine Mammal Protection Act (MMPA) is used to evaluate allowable levels of human-caused mortality (Wade 1998; Wade et al. 2012). (PBR is defined under section 3 of the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (16 U.S.C. 1362).) This analysis indicates that the estimated bycatch mortality of Maui's dolphins greatly exceeds PBR.

The DOC maintains a database of reports from the public of dead and stranded Hector's dolphins, and between 1921 and 2008, 45 percent of the reports for Maui's dolphins (4 of 11 dolphins) for which cause of death could be determined were found to have died due to "possible," "probable," or "known" entanglement (*http://www.doc.govt.nz/our-work/hectors-and-maui-dolphin-incident-database/1921–2008/*). Between July 2008 and January 2016, the DOC Incident Database lists an additional four confirmed Maui's dolphins, and of the two with determinable causes of death, one was an adult female found dead in January 2012 from entanglement in a commercial net set (*http://www.doc.govt.nz/our-work/hectors-and-maui-dolphin-incident-database/*). (The other dolphin was recorded as having died due to natural causes.)

Bycatch of Maui's dolphins occurs mainly in gillnet gear, but bycatch in trawl gear is likely also posing a threat (Bird and Palka 2013). Although commercial gillnetting had been practiced in New Zealand since 1930 (DOC and MFish 1994), fishing effort was low until the mid-1970s (Dawson 1991). By the 1980's, bycatch of dolphins in gillnets became a serious concern in New Zealand (Dawson and Slooten 2005). Eventually, in 2003, MFish began to address bycatch of Maui's dolphins by closing waters to set netting from Maunganui Bluff to Pariokariwa Point out to 4 nmi (7.4 km) and inside the entrance to the Manukau Harbor. Trawling was also prohibited out to 2 nmi (3.7 km) along most of this same stretch of coastline and out to 4 nmi within a short portion of the Maui's dolphin's core range (see Figure 7 in Manning and Grantz 2016). Commercial and recreational gillnetting continued within harbors and in the southern portion of the Maui's dolphin range.

In 2007, when the draft TMP was released, the MPI and DOC concluded that bycatch was still the most serious threat to Hector's dolphins. In 2008, MFish expanded protection for Maui's dolphins by extending the set netting closure out to 7 nmi (13.0 km; instead of 4 nmi (7.4 km)) and farther into Manukau Harbor. Then, in 2012, following an entanglement of a Maui's dolphin off Cape Egmont, an interim ban was put in place from Pariokariwa Point south to Hawera for all set netting out to 2 nmi (*Gazette,* 28 June 2012) and for commercial set netting between two and seven nautical miles offshore unless an MPI observer was on board (see Figure 8 in Manning and Grantz 2016). In 2013, the MPI determined that their interim measures would be made permanent (MPI and DOC 2013).

This steady expansion of area-based, bycatch-reduction measures along the west coast of the North Island has resulted in a substantial level of protection for Maui's dolphins. However, bycatch remains a concern for Maui's dolphins, because current fisheries restrictions do not extend throughout their range and certain forms of fishing still occur within the core portion of the subspecies' range. In particular, commercial and non-commercial set netting occur within all west coast harbors, with all areas within the harbors, from intertidal areas to the deeper channels, being fished for species like flounder, mullet, and rig (MFish and DOC 2007b). Sightings data (Slooten et al. 2005) and passive acoustic data (Rayment et al. 2011a) indicate that Maui's dolphins occur at least occasionally within west coast harbors and therefore may be at risk of entanglement in these areas (MFish and DOC 2007b). In addition, the southern extension of the gillnetting prohibitions that was put in place in 2012 only extends out to 2 nmi (3.7 km) from shore, as opposed to the 7 nmi (13 km) boundary elsewhere along the west coast. Beyond 2 nmi, gillnetting is permitted in this portion of the range if an MPI observer is on board. Furthermore, the extension of the closed area in the southern portion of the dolphin's range may not extend far enough southward. The risk assessment of Currey et al. (2012) used survey and non-survey sightings data to develop a distribution for Maui's dolphins that extends to Whanganui, which is about 70 km south of the current gillnet closed area boundary at Hawera. Trawling also continues in waters past the existing 2 nmi or 4 nmi offshore boundary for the trawling closed area—even in the core portion of the Maui's dolphin's range. Currey et al. (2012) concluded that trawling in this zone was a source of continued bycatch risk for Maui's dolphins.

Before the protected area extensions in 2012, estimated bycatch was about 4.69 to 13.01 dolphins per year or about 75 times the PBR of 0.044–0.1 Maui's dolphins per year (Currey *et al.* 2012).). The recent extensions to the protection measures have reduced the estimated bycatch to 3.28 – 4.16 Maui's dolphin mortalities per year or about 54 times PBR (Slooten 2014).

A series of regulations have been put in place to address some of the threats associated with mining and petroleum industry activities. The West Coast North Island Marine Mammal Sanctuary (WCNIMMS) was established in 2008 as part of the draft TMP, and restrictions were put in place on seabed mining and acoustic seismic surveys within the sanctuary. In particular, seabed mineral mining was prohibited out to 2 nmi (3.7 km) along the full length of the sanctuary and out to 4 nmi (7.4 km) south of Raglan Harbor to north of Manakau Harbor. However, a large swath of the sanctuary, which extends out 12 nmi (22.2 km) from the coast, remains open to mining. A range of operational requirements has been specified for seismic surveying within the sanctuary (Gazette: *Gazette,* 25 September 2008), including mandatory notification prior to conducting surveys and mandatory reporting of any interactions with dolphins. Qualified marine mammal observers are required on all survey ships to help ensure that no whales or dolphins are too close to the ship. When visibility is poor, hydrophones must be used to listen for whale and dolphin sounds (*Gazette,* 25 September 2008). In August 2012, the DOC Minister and the Minister of Energy and Resources developed a voluntary "Code of Conduct for Minimizing Acoustic Disturbance to Marine Mammals from Seismic Surveys Operations." This voluntary guidance was intended to increase protections for Maui's dolphins, in part by identifying their entire historical range out to 100m water depth as an "Area of Ecological Significance," which triggers additional mitigation requirements. Shortly thereafter, in November 2013, the DOC and MPI announced a decision to formally regulate seismic surveying and make the 2012 code of conduct a mandatory standard. The mandatory code of conduct applies to Territorial waters, the Exclusive Economic Zone (EEZ) of New Zealand, and within all marine mammal sanctuaries, and it continues to include requirements for planning, operations, monitoring, and reporting. The 2013 code of conduct is currently undergoing review and may be further augmented to increase protections for Maui's dolphins and other species of concern.

As indicated in the discussion above, there are gaps in the current regulatory protections for Maui's dolphins. Population viability analyses performed under previous management scenarios have predicted continued declines in abundance of Maui's dolphins or failure to recover (Burkhart and Slooten 2003, Slooten 2007a), as do more recent analyses under the current fisheries management regime (Slooten 2013). More recent modelling work also indicates that recovery of this subspecies will occur only under circumstances where human-induced mortality is extremely minimal (Wade et al. 2012; Slooten 2013). Therefore, we conclude that while the protections for Maui's dolphins have gradually increased from 2003 to present, there is insufficient evidence to conclude that current regulatory measures are adequate in terms of addressing threats to this subspecies.

Other Natural or Manmade Factors Affecting Its Continued Existence

Other threats identified in the 2012 risk assessment and characterized as being likely to affect population trends within the next 5 years include fishing vessel noise, disturbance, and trophic effects of fishing; however, these threats were considered to collectively make very limited contributions to the overall level of human-caused mortality (Currey et al. 2012). Although vessel traffic and its associated impacts of disturbance and boat strikes were considered to contribute little to annual mortality of Maui's dolphins, mortality due to vessel traffic was rated as having a 47.8 percent chance of exceeding PBR (Currey et al. 2012). Due to their coastal distribution and apparent attraction to small boats (Baker 1978, Slooten and Dawson 1988), the potential for boat strikes could be considered relatively high, but reports of boat strikes have been extremely rare (Stone and Yoshinaga 2000a). None of the reports within the DOC Incident Database from July 2008 to April 2016 are listed with boat strike as the cause of death.

Summary of ESA Section 4(a)(1) Factors Affecting SI Hector's Dolphin

Available information regarding historical, current, and potential threats to SI Hector's dolphins was thoroughly reviewed and is discussed in detail in the status review report (Manning and Grantz 2016). We summarize information regarding these threats below according to the factors specified in section 4(a)(1) of the ESA.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

As discussed earlier for Maui's dolphins, persistent chemical pollutants are a concern for SI Hector's dolphins, which can theoretically accumulate high concentrations of contaminants due to their longevity, high trophic-level, and naturally high blubber content (Stockin et al. 2010). In cetaceans, biological impacts resulting from accumulation of contaminants such as heavy metals, PCBs, and organochlorine (OC) pesticides include endocrine disruption, reproductive impairment, immune suppression, and elevated infectious disease (*e.g.,* Fujise et al. 1988, Kuiken et al. 1994, O'Hara and O'Shea 2001, Schwacke et al. 2002, Jepson et al. 2005, Wells et al. 2005). As previously mentioned, Stockin et al. (2010) found high PCB and OC contaminant loads in Hector's dolphins (n=27, SI Hector's dolphins; n=3, Maui's dolphins) sampled from 1997 to 2009, and a roughly two-fold increase in levels of OC pesticides than had been previously reported for Hector's dolphins by Jones et al. (1999). However, no PCB concentrations were above thresholds associated with reproductive and immunological effects (Stockin et al. 2010). High levels of polychlorinated dibenzo-p-dioxins (PCDDs) and dibenzofurans (PCDFs), which are two related and ubiquitous chemical contaminants, were also found to occur at unexpected levels in the blubber of six SI Hector's dolphins (Buckland et al. 1990).

Plastic marine debris is also a concern for SI Hector's dolphins. Plastics and other synthetic, non-biodegradable materials in the marine environment create the potential for entanglement, injury, and ingestion by various marine species. As with other marine mammals, Hector's dolphins may become entangled and subsequently wounded, or have impaired foraging ability, and/or increased susceptibility to predation. Ingestion of plastics by marine species has been associated with a multitude of impacts including blockage of the digestive tract, starvation, reduction in reproductive capacity, drowning, and possible accumulation of toxic compounds (Laist 1997, Gregory 2009). Plastic debris was found in the stomach of a SI Hector's dolphin that stranded along the coast of the Canterbury region, and there are anecdotal reports of SI Hector's dolphins off Banks Peninsula with fishing line or netting entangling the head or upper body and cutting into the blubber (MFish and DOC 2007b).

Mining occurs along the west coast of the South Island where there are significant nearshore and beach deposits of ilmenite (mined mainly for titanium dioxide). The TMP for Hector's dolphins identified possible impacts of mining activity, including loss or reduction in prey species, noise, and vessel disturbance (MFish and DOC 2007b). Based on a search of the NZPM's map in June 2016 (*http://data.nzpam.govt.nz/permitwebmaps?commodity=minerals*), a large portion of the SI Hector's dolphin west coast range is included in a prospecting permit application, indicating the potential for continued mining activity in this region.

Prospecting permits for petroleum cover large areas along the southeastern coast of the South Island (*http://data.nzpam.govt.nz/permitwebmaps?commodity=petroleum*, June 2016). Drill ships are also operated off Canterbury and along the west coast of the South Island. Potential habitat impacts from these activities include oil spills; increased vessel traffic; and acoustic disturbances from seismic surveys, sonar, and drilling activities. Contaminants in oil and gas may impact the health of the dolphins, and the associated noise may disrupt normal behaviors, such as navigating, migrating, and feeding (Gordon et al. 2003, Thompson 2012).

Overall, it is clear that SI Hector's dolphins are exposed to multiple habitat-related threats. However, the extent to which SI Hector's dolphins are being impacted—both individually and at a population level—by these habitat-related threats is not yet established due to insufficient data (MFish and DOC 2007b). It is possible that SI Hector's dolphin habitat will become increasingly degraded in the future with increasing human use of the coastal zone and its resources (MFish and DOC 2007b).

Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Hector's dolphins have not been systematically captured for any commercial, recreational, scientific, or educational purposes; although, as noted earlier, a few Hector's dolphins have been taken for live exhibition. While Hector's dolphins have also apparently been taken for food, oil, and bait, the extent to which this occurred is not known (Pichler et al. 2003).

There is growing evidence that overutilization in the form of commercial dolphin-watching and swim-with-dolphin operations, which are increasingly popular tourist activities in New Zealand, are a concern for SI Hector's dolphins. The majority of the commercial viewing and encounter operations in New Zealand occur around the South Island and are especially popular along the east coast off Kaikoura and within Akaroa Harbor, which have become major eco-tourist destinations in New Zealand (Martinez 2010b). Within Akaroa Harbor, and as of 2010, there were up to about 18 daily 'swim-with' trips and 14 dolphin-watching trips per day between November and March that specifically targeted Hector's dolphins (Martinez 2010b). In addition to permitted commercial operations, opportunistic viewing also occurs by both commercial and recreational boaters.

Dolphin-watching and swim-with-dolphin operations have been shown to cause behavioral changes in Hector's dolphins (Bejder et al. 1999, Constantine 1999, Martinez et al. 2012). In a study of SI Hector's dolphins in Porpoise Bay, Bejder et al. (1999) found that while SI Hector's dolphins were not displaced by dolphin-watching tour boats, the dolphins did respond by approaching the boats, especially initially, and by forming significantly tighter groupings. A possible interpretation of the behavioral response of 'bunching' is that the boat is perceived as some kind of threat and may in fact cause the animals some level of stress (Constantine 1999). In Akaroa Harbor, Martinez (2010b) found that both diving—which is considered a feeding behavior—and travelling were significantly disrupted by vessel interactions. Evidence also indicates that the use of sounds to attract Hector's dolphins to swimmers affects the behavior of the dolphins (Martinez et al. 2012). For example, both the number and the duration of close interactions or approaches by Hector's dolphins were significantly greater when a swimmer banged two rocks together underwater (Martinez et al. 2012). Such deliberate efforts to attract Hector's dolphins could have behavioral consequences such as disrupted or reduced foraging time, which in turn can have biological consequences (Martinez et al. 2012). For some regional dolphin populations, a relatively large portion of that population can be exposed to the tourist activities occurring in a particular harbor or area. For example, about 80 percent of the SI Hector's dolphins that were photo-identified in surveys around Banks Peninsula between 1985 and 2006 had alongshore home ranges that included Akaroa Harbor, and for half of these dolphins, Akaroa Harbor served as a core use or "hub" area (Rayment et al. 2009a).

Longer-term impacts of these tourism activities on SI Hector's dolphins are not yet clear but could include physiological stress, reduced energy intake, and possibly even reduced calving success. Linkages between immediate behavioral responses to vessel traffic and longer-term biological consequences have already been established for other species (*e.g., Tursiops* sp.) and include declines in abundance and reduced reproductive success in females (Bejder et al. 2006a, 2006b, 2006c). Given this information and the fact that SI Hector's dolphin populations encounter dolphin-watching operations in multiple areas of their range (*e.g.,* Porpoise Bay, Timaru, Akaroa Harbor, and Marlborough Sounds), dolphin-watching and 'swim-with' activities are likely posing a significant but sub-lethal threat to this subspecies. The actual magnitude of this threat cannot yet be established, but this threat is likely to persist given the popularity and lucrativeness of the eco-tourism industry in New Zealand.

Disease or Predation

As previously mentioned, predation of Hector's dolphins by several shark species, such as broadnose seven-gill sharks (*N. cepedianus)* and blue sharks (*P. glauca*), is known to occur (Slooten and Dawson 1988). Although seven-gill sharks are particularly common around Banks Peninsula, predation rates are not known (Slooten and Dawson 1988), and there is no evidence to suggest predation is posing a threat to this subspecies.

Prevalence of infectious disease and associated impacts have not yet been well studied in Hector's dolphins, but recent evidence suggests that infectious disease may be a significant source of mortality for SI Hector's dolphins. In particular, Roe et al. (2013) found that out of 22 dolphins collected between 2007 and 2011 for which a definitive cause of death was established, a total of ten (45 percent) had died due to infectious disease (*Toxoplasma gondii* infections, bacterial infection, or fungal infection). Five of the 22 SI Hector's dolphins (23 percent) were found to have died as a result of *T. gondii* infection (toxoplasmosis, Roe et al. 2013). While toxoplasmosis is typically a secondary disease in cetaceans, resulting in symptoms in immunosuppressed individuals rather than healthy individuals, there was no evidence of immunosuppression in these cases, suggesting that Hector's dolphins are particularly susceptible to toxoplasmosis (Roe et al. 2013). Beyond direct mortality, toxoplasmosis can also have other biological consequences, such as behavioral changes, reduced reproductive rate, and neonatal loss. Because the fatal cases of *T. gondii* infection in this study were distributed throughout almost the entire range of the SI Hector's dolphin, exposure is probably occurring over broad areas. Overall, the available data suggest that disease, especially toxoplasmosis, is posing a threat to SI Hector's dolphins.

Inadequacy of Existing Regulatory Mechanisms

As with Maui's dolphins, a number of regulatory measures have been put in place to address bycatch of SI Hector's dolphins. As previously noted, by the 1980's, bycatch of Hector's dolphins in commercial and recreational gillnets was recognized as a serious issue in New Zealand (Dawson and Slooten 2005). In the South Island, a region of particular concern was the Pegasus Bay and Canterbury Bight area along the east coast, where there was a known high degree of overlap between inshore gillnetting and a locally abundant population of SI Hector's dolphins. To begin to quantify the level of bycatch, Dawson (1991b) conducted fisherman interviews during 1984–1988 and found that at least 230 SI Hector's dolphins had died due to entanglement in commercial and recreational gillnets in the Pegasus Bay and Canterbury Bight region during this period. Ages of entangled dolphins that were physically examined (n=43) ranged from younger than 1 year to about 20 years old, but a high proportion (63 percent) were 3 years old or younger, suggesting that younger dolphins are especially vulnerable to entanglement (Dawson 1991b). Overall, this level of bycatch (*i.e.*, 230 over 4 years or about 57.5 entanglement mortalities per year), greatly exceeded the estimated population growth rate for this regional population (1.8 – 4.9 percent or 13.3 – 36.3 individuals per year; Dawson and Slooten 1988b, Slooten and Lad 1991). Subsequent analyses based on observer data, suggested that bycatch rates during this period (1984 – 1988) were actually much higher, averaging 100 dolphins per year (Davies *et al.* 2007).

Released in 2007, the TMP for Hector's dolphins identified set gillnetting as the greatest source of human-caused mortality of Hector's dolphins but also discussed how SI Hector's dolphins are incidentally captured in other gear types (MFish and DOC 2007b). Between 1921 and when the TMP was released, the DOC Incident Database indicates there had been 19 reports of Hector's dolphin mortalities due to trawls, which corresponds to 9 percent of the reported incidents with a known cause of death. All 19 of these reports occurred off the South Island within 2 nmi (3.7 km) of shore (MFish and DOC 2007b). Entanglement deaths of SI Hector's dolphins have also occurred in pot traps (*e.g.*, rock lobster pots). Three such incidents were reported (in 1989, 1997, and 2004) and all occurred off Kaikoura, which is along the northeast coast of the South Island (MFish and DOC 2007b).

In reaction to the growing concern over bycatch of Hector's dolphins, the DOC established the Banks Peninsula Marine Mammal Sanctuary (BPMMS) in 1988. When it was first established, the sanctuary extended from Sumner Head to the Rakaia River and out to 4 nmi (7.4 km), covering an area of about 1,140 sq km. All gillnetting within the sanctuary (with some harbor exceptions) was prohibited from November through February, and additional gear restrictions that applied throughout the remainder of the year essentially resulted in a year-round ban of commercial gillnetting within the sanctuary (Dawson and Slooten 1993). Additional restrictions on recreational gillnetting, such as limiting fishing to daylight hours only and requiring continuous tending of nets, were also enacted to help further reduce bycatch mortality. Based on fisheries observer data, bycatch in gillnets continued to occur to the immediate north and south of the sanctuary at unsustainable levels (Baird and Bradford 2000, Dawson and Slooten 2005), and there was little evidence of improved survival of SI Hector's dolphins within the sanctuary (Cameron et al. 1999). In recognition that further protection of SI Hector's dolphins was needed, the sanctuary boundaries were expanded in 2008 to the north and south and out to 12 nmi (22.2 km) offshore, but no restrictions on fishing activities were applied to the area beyond the original 4 nmi (7.4 km) sanctuary boundary (MFish and DOC 2007b, DOC 2008). The sanctuary currently encompasses about 4,130 sq. km and 389 km of coastline.

In addition to the expansion of BPMMS, a series of fishing restrictions were put in place in 2008 to reduce bycatch of SI Hector's dolphins elsewhere around the South Island. Along the east and south coasts, from Cape Jackson in the Marlborough Sounds to Sandhill Point east of Fiordland, commercial gillnetting was banned out to 4 nmi (7.4 km) from shore, except at Kaikoura, where it was banned out to 1 nmi (1.9 km), and in Te Waewae Bay, where it is banned out to about 9 nmi (16.7 km) from shore (MFish 2008). Recreational gillnetting was allowed to continue in specified harbors and estuaries; and, in the case of flatfishing (*e.g.* for *Rhombosolea* spp.), gillnetting was permitted from April through September in the upper reaches of four harbors on Banks Peninsula, and in a similar area in Queen Charlotte Sound. Trawling was also prohibited along the east and south coasts from Cape Jackson to Sandhill Point out to 2 nmi (3.7 km), with an exception for trawls using a low headline net (used to target flatfish, MFish 2008). On the west coast of the South Island, again with some exceptions for certain harbors, inlets, estuaries, river mouths and lagoons, recreational set netting was banned year-round in waters out to 2 nmi (3.7 km) and from Cape Farewell on Farewell Spit to Awarua Point north of Fiordland; and commercial set netting was banned in the same area from December through February (MFish 2008). No trawling prohibitions were implemented for the west coast, and no fishing prohibitions were instituted along the north coast of the South Island. Since 2008, some amendments and changes to these fishery restrictions have been made for particular fishing activities and specific locations, but these changes are limited in scope and scale and are not discussed in detail here; see Manning and Grantz (2016) for additional detail.

Recently, in 2013, the DOC established the Akaroa Harbor Marine Reserve at the mouth of Akaroa Harbor on Banks Peninsula. This reserve includes about 512 hectares of habitat or about 12 percent of the total harbor area (*www.doc.govt.nz/parks-and-recreation/places-to-go/canterbury/places/banks-peninsula-area/akaroa-marine-reserve/*). As a result of this designation, which provides protection to all marine life within the reserve, fishing and any other taking of living or non-living marine resources is prohibited.

Despite the gradual increase in fishing restrictions around the South Island, exposure of SI Hector's dolphins to fishing activity remains fairly high throughout the South Island. On the west coast, where the dolphins are known to occur year-round and range to about 6.5 nmi (12.0 km) offshore (Mackenzie and Clement 2016), commercial gillnetting is prohibited only out to 2 nmi for just 3 months of the year, and there are no prohibitions on trawling. Survey sightings off the south coast indicate that the dolphins at least occasionally occur as far as 9.6 nmi (17.8 km) from shore and outside of protected areas (Clement et al. 2011). On the east coast, a substantial portion of the population is distributed well beyond the current closed areas, particularly in winter months (*e.g.*, out to 18.2 nmi (33.7 km), Rayment et al. 2006, Rayment et al. 2010b); and gillnetting is still allowed within the BPMMS in waters between the original (4 nmi) and the extended offshore boundary (12 nmi).

Evidence of continued bycatch around the South Island is available in the DOC Incident Database (*www.doc.govt.nz/our-work/hectors-and-maui-dolphin-incident-database/*), which lists 13 entanglement mortalities between May 2009 and April 2015; and, in 2012, two Hector's dolphins were found stranded and wrapped in a gillnet just north of Christchurch (Slooten 2013, 2016). Unfortunately, the actual level of bycatch since 2008 is unknown and the database records provide only a subset of the total bycatch (Slooten and Dawson 2016). The majority of mortalities captured in the database are also listed as having unknown or indeterminable causes. Pichler et al. (2003) reported that of the dolphins caught by commercial and recreational gillnet fishers and brought in for necropsies, only about half have discernable net markings, contributing further to the underestimation of bycatch rates. Some additional data are available from commercial gillnetting observer programs. For example, based on low observer coverage of commercial gillnet vessels from May 2009 through April 2010 (about 15.8 percent of fishing days and about 13 percent of total sets), three SI Hector's dolphin mortalities were recorded from the east coast of the South Island (ECSI; MPI 2011b, Slooten and Davies 2012). Slooten and Davies (2012) analyzed these data and estimated that 23 SI Hector's dolphins (range of 4 − 48, CV = 0.21) were caught off the ECSI in that year.

Evidence from multiple modelling efforts suggests that SI Hector's dolphins will continue to decline due to bycatch under the current management measures. For example, for the most recent assessment of the BPMMS population, which has benefited from almost three decades of protection, Gormley et al. (2012) conducted a mark-recapture analysis of photographically identified dolphins (n=462) from 1986 to 2006 to compare annual survival rates before and after establishment of the sanctuary and associated gillnetting restrictions. Results indicated that between the two time periods, mean survival probability increased by 5.4 percent (from 0.863 to 0.917), which corresponds to a 6 percent increase in population growth. However, the population projections using the post-sanctuary survival rate also corresponded to a mean annual population decrease of 0.5 percent per year, with only 41 percent of the model simulations resulting in a population increase (Gormley et al. 2012). As noted by Gormley et al. (2012), this finding is consistent with other research indicating that the BPMMS is too small to allow recovery of this SI Hector's dolphin population (Rayment et al. 2006, Slooten et al. 2006b, Slooten and Dawson 2008, Rayment et al. 2010b, Slooten and Dawson 2010). A population viability analysis by Slooten and Dawson (2010), which relied on commercial gillnet observer data for a portion of the east coast to estimate bycatch (from Baird and Bradford 2000), projected that the west coast population would continue to decline (by just over 1,000 individuals by 2050), the Banks Peninsula population would continue to decline, and the remainder of the east coast population would slowly increase (by 450 individuals by 2050). In a review of risk assessments for SI Hector's dolphins, Slooten and Davies (2012) found that despite differing modelling approaches and assumptions applied, the risk assessments were highly consistent and were in general agreement that recovery of SI Hector's dolphins is unlikely under the current level of protections.

Overall, based on the available information, the existing measures to address the threat of bycatch of SI Hector's dolphins appear inadequate, and we conclude that bycatch continues to pose a significant risk to this subspecies. The risk of bycatch in commercial and recreational trawl and gillnet fisheries remains high given the known distribution of the dolphins relative to areas closed to fishing, especially on the west and north coasts (Faustino et al. 2013, Slooten 2013). Although bycatch of SI Hector's dolphins has been slowed by the fisheries restrictions implemented in 2008, available risk analyses indicate that population decline is expected to continue (Slooten and Dawson 2010, Gormley et al. 2012, Slooten and Davies 2012). Finally, enforcement of the existing regulations may be insufficient. Illegal fishing has been reported for Banks Peninsula (Slooten and Davies 2012), and illegal fishing is discussed in the TMP (MFish and DOC 2007b). There are insufficient data available to evaluate the level of compliance with existing regulations.

Several management measures have been implemented to address some of the threats associated with mining and petroleum industry activities. For both petroleum and minerals mining activities, a permit is generally required from local authorities under the Resource Management Act 1991 for mining activities within New Zealand's territorial sea (within 12 nmi from the coast). For mining activities beyond the territorial sea, the Environmental Protection Authority (EPA) manages the environmental effects of activity under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) and its regulations, which establish which activities require permits and impact assessments. Seismic surveys are permitted under the EEZ Act if they adhere to the Code of Conduct for Minimizing Acoustic Disturbance to Marine Mammals from Seismic Survey Operations (DOC 2013). In 2013, the DOC and MPI updated their seismic survey guidelines and announced a decision to make the code of conduct a mandatory standard. The mandatory code of conduct applies to Territorial waters, the EEZ of New Zealand, and within all marine mammal sanctuaries, and includes requirements for planning, operations, monitoring, and reporting. The 2013 code of conduct is currently undergoing review and may be further augmented to increase protections for Hector's dolphins and other species of concern. Discharge management plans associated with mining activities also must be approved under the Maritime Rules Part 200, Maritime New Zealand prior to drilling.

To help manage non-fishing-related threats to Hector's dolphins, the DOC expanded BPMMS in 2008 and established an additional three marine mammal sanctuaries– the Catlins Coast, Clifford and Cloudy Bay, and Te Waewae Bay Marine Mammal Sanctuaries (MMS). The Catlins Coast MMS lies along the south coast of the South Island (SCSI) between Three Brother's Point and Busy Point and extends 5 nmi to 6.9 nmi offshore. The sanctuary encompasses about 660 sq km of marine habitat and 161 km of coastline. The Clifford and Cloudy Bay MMS, which lies on the northeast coast, includes about 1,427 sq km and 338 km of coastline between Cape Campbell to Tory Channel, and extends 12 nmi offshore. The Te Waewae Bay MMS includes this entire SCSI bay and encompasses about 359 sq km of marine habitat and 113 km of coastline. Protections for SI Hector's dolphins that accompanied the expansion of BPMMS and the designation of these three additional sanctuaries were specific requirements for conducting seismic surveys. Included among the requirements for seismic surveys are mandatory notification prior to conducting surveys, mandatory reporting of any interactions with dolphins, and presence of qualified marine mammal observers on all survey ships (*Gazette*, 23 September 2008). There are no additional restrictions on mining activities within the sanctuaries.

Overall, while there is a clear regulatory process in place for reviewing and permitting mining activities, given the existing information, it is not clear whether existing management measures are adequate to minimize acoustic and other impacts to SI Hector's dolphins such that these activities do not pose a threat to the subspecies.

The dolphin-watching industry in New Zealand is regulated under the Marine Mammals Protection Regulations (MMPR), which were revised in 1992 in response to the growth in marine mammal-based tourism (Constantine (1999), citing Donoghue 1996). Among other provisions, these regulations govern the issuance of permits to commercial operators and, as discussed above, the behavior of vessels around dolphins. As a permit issuance criterion, commercial tour operators are required to ensure that their activities have "no significant adverse effect" on their targeted population (MMPR, 1992; Appendix 1.4). Given the high level of commercial dolphin watching operations in some portions of the SI Hector's dolphin's range, the repeat exposure of individual dolphins to vessels and/or 'swim-with' activities, and the potential linkage to long-term biological consequences, it is possible that the current level of tourism is having a significant adverse impact on the subspecies. We find that there are insufficient data by which to verify that this permit issuance criterion is being met.

Pursuant to the MMPR, all boaters, both recreational and commercial, must adhere to certain rules when operating around marine mammals. For example, no more than 3 vessels and/or aircraft are allowed within 300 m of any marine mammal at the same time; speeds must be kept to 'no wake' speeds when within 300 m of any marine mammal; swimmers are prohibited from swimming with dolphin pods with very young calves; and boats are prohibited from circling, obstructing, or cutting through any group (MMPR 1992, part 3). Compliance monitoring is limited and sufficient quantitative data are not available to assess compliance by commercial and recreational boaters with these regulations (MFish and DOC 2007b). Thus, it is difficult to determine whether these regulations, and the associated education and enforcement, adequately address boat-related disturbance and boat strikes, which are discussed further in the section below.

Other Natural or Manmade Factors Affecting Its Continued Existence

Other potential threats to SI Hector's dolphins include vessel noise, trophic effects of fishing, and climate change; however, there are no data available to assess how or whether these factors are contributing to the overall level of human-caused mortality or population trends. Boat strikes, however, are a documented source of mortality for Hector's dolphins, and the TMP identifies vessel traffic as a threat that can result in disturbance and mortality (MFish and DOC 2007b). Vessel traffic has increased around the South Island, especially in areas more densely populated by people, and reports of cetaceans with propeller scars have increased (Martinez 2010b). Stone and Yoshinaga (2000) reported the death of two calves on consecutive days in Akaroa Harbor. In 1999, two calves, both estimated to be younger than 4 weeks old, were recovered on successive days from Akaroa Harbor, and autopsy results confirmed that one calf was killed by collision with a boat and the other calf by a propeller strike (Stone and Yoshinaga 2000). Stone and Yoshinaga (2000) suggest that mother and calf pairs may be less capable of evading boats if they are approached. Although the specific cause of death was unknown, the TMP also states that there were an additional nine cases from around the South Island in which cause of death was some form of trauma (MFish and DOC 2007b). Overall, data are too limited to assess the rate of boat strikes, but existing information clearly indicates that boat strikes are contributing to the total level of human-caused mortality.

Demographic Risks Affecting Extinction Risk for Maui's Dolphins

In our status review, data and information about demographic risks to Maui's dolphins were considered according to four categories—abundance and trends, population growth/productivity, spatial structure/connectivity, and genetic diversity. Each of these demographic threat categories was then rated according to the following qualitative scale:

Very low risk: It is unlikely that this factor contributes significantly to risk of extinction, either by itself or in combination with other demographic factors.

Low risk: It is unlikely that this factor contributes significantly to long-term or near future risk of extinction by itself, but there is some concern that it may, in combination with other demographic factors.

Moderate risk: This factor is likely to contribute significantly to long-term risk of extinction, but does not by itself constitute a danger of extinction in the near future.

High risk: This factor contributes significantly to long-term risk of extinction and is likely to contribute to short-term risk of extinction in the near future.

Very high risk: This factor by itself indicates danger of extinction in the near future. (Note: The term "significantly" is used here as it is generally defined—*i.e.*, in a sufficiently great or important way as to be worthy of attention.)

In the sections below, we present information from Manning and Grantz (2016) to summarize the demographic risks facing Maui's dolphins.

A. Abundance and Trends

Based on line-transect aerial surveys conducted in January 2004, Slooten et al. 2006a estimated a total population size of 111 Maui's dolphins (95 percent CI = 48–252). A more recent abundance estimate, derived through genetic mark-recapture analysis of samples collected in 2010 and 2011, is 55 dolphins over 1 year of age (95 percent CI: 48 – 69, Hamner et al. 2012b). This estimate is based on a genetic mark-recapture analysis using 37 biopsy samples collected in 2010 and 36 biopsy samples collected in 2011, which were genotyped across 20 variable microsatellite loci and analyzed in a closed-sample model (Lincoln-Peterson estimator with Chapman correction, Chapman 1951; Hamner et al. 2012b). Both of these estimates indicate that the abundance of Maui's dolphins is critically low.

Small populations can face higher risks of extinction from a range of factors, including stochastic demographic processes, genetic effects, and environmental catastrophes; and various theoretical abundance thresholds have been proposed as indicators of relative extinction risk (Gilpin and Soulé 1986, Allendorf et al. 1987, Mace et al. 2008). Both of the most recent abundance estimates for Maui's dolphins are well below commonly cited theoretical thresholds indicating a very high risk of extinction—*e.g.,* 250 total individuals (Allendorf et al. 1987) and 250 mature individuals (Mace et al. 2008).

Although historical abundance estimates are not available, Slooten (2007a) estimated population abundances for 1970 by back-calculating, using a population estimate of 117 dolphins (CV= 0.44) and estimates of fishing effort and rate of dolphin bycatch. Results suggest that the abundance of Maui's dolphins in 1970 was about 1,729 dolphins (CV= 0.51, Slooten 2007, Slooten and Dawson 2010). Martien et al. (1999) also projected numbers back to 1970 using an earlier abundance estimate published by Dawson and Slooten (1988; *i.e.,* 134 dolphins), and estimated there were about 448 Maui's dolphins in 1970. Although there are differences in the models, assumptions, input data, and results of these two analyses, these estimated abundances for 1970 suggest the Maui's dolphin population has declined by about 90 percent or more when compared to the current abundance estimate of 55 dolphins over 1 year of age.

Available evidence suggests that abundance of Maui's dolphins will continue to decline. For example, an annual rate of decline of 3.0 percent per year (95 percent CI: −11 percent to +6 percent) and an annual survival rate of 84 percent (95 percent CI = 0.75–0.90) was estimated by Hamner et al. (2012b). Although this result was somewhat equivocal given the large confidence interval, a projected decline is supported by the trend analysis conducted by Wade et al. (2012) using six different abundance estimates generated from 1985 to 2011. Wade et al. (2012) calculated a statistically significant declining trend of −3.2 percent per year from 1985 to 2011 (90 percent CI = −5.7 percent to −0.6 percent, p = 0.029).

Given a population abundance of fewer than 100 dolphins over one year of age, evidence of a very large historical decline, and evidence of possible continued decline, this demographic risk category was rated as posing a "very high risk" for the subspecies.

B. Population Growth

Fecundity (*i.e.,* the number of female offspring per female per breeding season) of Maui's dolphins is relatively low (0.165 to 0.25, Secchi et al. 2004b), with females having calves every two to four years after reaching maturity at about 7 years of age (Slooten and Dawson 1994, Dawson 2009). Due to an estimated lifespan of only about 22 years, later maturity, and low fecundity, Maui's dolphins are considered to have a low intrinsic rate of population growth (Dawson 2009). The annual mortality rate is estimated to be about 17 percent per year for dolphins 1 year of age and older (Hamner et al. 2012b), and, as mentioned above, modelling results suggest a declining population trend (Wade et al. 2012). Overall, this demographic factor was found to constitute a "high risk" for Maui's dolphin.

C. Population Structure and Connectivity

Maui's dolphins are thought to have once ranged along the entire coast of the North Island (Russell 1999, Dawson et al. 2001b, Baker et al. 2002, Du Fresne 2010). The dolphins now occur only off the west coast of the North Island. While there is no indication of spatial structuring within the subspecies, data do indicate that home ranges of individuals are probably small (*e.g.* 35.5 km (SE= 4.03), Oremus et al. 2012), and that movements over 100 km are probably rare (Hamner et al. 2012b). Overall, the available information indicates that substantial range contraction has already occurred, gene flow will be limited among populations of Hector's dolphins that are over 100 km apart, and any fragmentation of the remaining population would be a serious concern. Overall, this demographic factor was rated as posing a "moderate risk" for Maui's dolphins.

D. Genetic Diversity

Genetic diversity in Maui's dolphins is currently very low. Pichler (2002) analyzed microsatellite DNA for Maui's dolphins across six loci (n = 4 to 12) and reported an average of 1.5 alleles per locus, three of which were fixed (*i.e.,* 1 allele), and an overall low heterozygosity (0.083 − 0.25). Analyses of contemporary mitochondrial DNA (mtDNA) samples also indicate a single maternal lineage (Pichler 2002, Hamner et al. 2012a). This level of haplotype diversity (*i.e., h* = 0) is well below the typical range of 0.70 − 0.92 for other more abundant odontocete species (Pichler and Baker 2000) and is only seen in several other rare marine mammals (*e.g.,* vaquita (*Phocoena sinus*), north Atlantic right whale (*Eubalaena glacialis*), Dawson et al. 2001b).

Maui's dolphins are reproductively isolated from SI Hector's dolphins, and there has been no recent gene flow between the subspecies (Pichler et al. 2001, Hamner et al. 2012a). Based on analyses of mtDNA, the North Island subspecies has been isolated from the South Island populations for up to 16,000 years (Pichler et al. 2001). Hamner et al. (2012a) noted that some degree of inbreeding is inevitable for such a small, isolated population and also suggested that the significant deviation from a 1:1 sex ratio they observed for stranded Maui's dolphins, due to an excess of females in their sample (41 females of 68 total Maui's dolphins), may be an indication of deleterious inbreeding effects.

Overall, Maui's dolphins have very low genetic diversity, are genetically isolated, and are vulnerable to inbreeding depression and the accumulation of deleterious mutations, which are serious concerns that can hasten the extinction of small populations (Lunch et al. 1995, Frankham 2005, O'Grady et al. 2006). This demographic factor was rated as a "high risk" for Maui's dolphins.

Demographic Risks Affecting Extinction Risk for SI Hector's Dolphins

In the sections below, we present information from Manning and Grantz (2016) on the demographic risks facing SI Hector's dolphins. As with Maui's dolphins, demographic risks to SI Hector's dolphins were considered according to the same four categories (abundance and trends, population growth/productivity, spatial structure/connectivity, and genetic diversity) and rated according to the same qualitative scale as defined above.

A. Abundance and Trends

Various surveys have been completed for portions of the SI Hector's dolphin's range, each producing a separate, regional abundance estimate for the associated portion of the subspecies' range. (See Manning and Grantz (2016) for discussion of older surveys and abundance estimates.) The most recent abundance estimate for the west coast of the South Island (WCSI) is based on aerial surveys conducted by Mackenzie and Clement (2016) in 2014/2015 from Farewell Spit south to Milford Sound. These surveys included substantial effort in waters beyond 4 nmi (7.4 km) from shore and included an "outer" survey zone between 12 nmi and 20 nmi from shore (22.2–37.0 km, MacKenzie and Clement 2016). Based on these surveys, summer and winter abundance estimates of 5,490 dolphins (95% CI = 3,319–9,079) and 5,802 dolphins (95%

CI = 3,879–8,679), respectively, were estimated using mark-recapture distance sampling after correcting for availability bias (or how "available" the dolphins are at or near the surface where they can be observed; Mackenzie and Clement 2016)). The most recent surveys of the north (NCSI) and east coasts (ECSI) of the South Island were conducted in the summer of 2012/2013 and winter 2013 and extended from Farewell Spit to Nugget Point and extended offshore to 20 nm (37.0 km; MacKenzie and Clement 2014). These intensive aerial surveys, which had a similar design as the WCSI surveys, produced an estimated summer abundance of 9,728 dolphins (95 percent CI= 7,001–13,517) and an estimated winter abundance of 8,208 dolphins (95 percent CI = 4,888–13,785, MacKenzie and Clement 2014, Mackenzie and Clement 2016). The most recent surveys of the SCSI produced an abundance estimate of 238 dolphins (95 percent CI = 113–503, Clement et al. 2011, Mackenzie and Clement 2016). This abundance estimate was based on two aerial surveys completed in March and August 2010 from Puysegur Point to Nugget Point and extended out to the 100-m depth contour (Clement et al. 2011). Following completion of the last of these three regional survey efforts, Mackenzie and Clement (2016) re-analyzed the data and, using the sum of the averages of the summer and winter abundance estimates from these surveys, calculated a total population estimate of 14,849 SI Hector's dolphins (95% CI = 11,923–18,492).

Despite the large confidence intervals associated with some of these recent abundance estimates, the data indicate that the total abundance of SI Hector's dolphins is greater than commonly applied theoretical abundances used as indicators of a high risk of extinction—*e.g.*, 2,500 total individuals (Allendorf et al. 1987) and 1,000 mature individuals (Mace et al. 2008)—suggesting that SI Hector's dolphins are not at high risk of extinction due to abundance alone.

Populations of SI Hector's dolphins have, however, experienced substantial declines and available information suggests that the subspecies is likely to continue declining (Slooten and Lad 1991, Slooten et al. 1992, Burkhart and Slooten 2003). SI Hector's dolphin populations are estimated to have experienced declines of 20–73 percent since the 1970s following the expansion of commercial gillnetting in New Zealand (Slooten 2007, Davies et al. 2008, Slooten and Dawson 2010). Evidence of a historical decline is also provided by the findings of Pichler and Baker (2000), who detected a significant decline in mtDNA diversity (from $h = 0.65$ to $h = 0.35$, $p<0.05$) for ECSI Hector's dolphins in a comparison of contemporary (n=108) samples to historical samples (n=55) dating back to 1870. These authors suggest that the high rate of decline in mitochondrial DNA diversity reflects a high rate of population decline driven by unsustainable levels of bycatch mortality. While there is strong evidence that adult survival in the ECSI population has improved following the implementation of fishing restrictions at BPMMS (0.863 (95 percent CI = 0.647–0.971) pre-sanctuary versus 0.917 (95 percent CI = 0.802–0.984) post-sanctuary), the improved survival rate still corresponds to an estimated decline of 0.5 percent per year (Gormley et al. 2012). Results of modelling efforts by Slooten and Davies (2012) also suggest continued population declines over the next 50 years if fisheries management practices remain the same.

Overall, this demographic factor was rated as posing a "moderate risk" for SI Hector's dolphins.

B. Population Growth

Given an estimated lifespan of about 22 years, relatively late maturity (at 7–9 years), and low fecundity (0.165 to 0.25), Hector's dolphins are considered to have a low intrinsic population growth rate (Slooten 1991, Slooten and Lad 1991, Secchi and Fletcher 2004, Secchi et al. 2004b, Dawson 2009). Females may produce only four to seven calves over their lifetime. Estimates of the survival rate of SI Hector's dolphins ≥ 1 year old have ranged from 0.77 to 0.89 (Slooten and Lad 1991, Slooten et al. 1992, Slooten and Dawson 1994, Cameron et al. 1999). Based on simple Leslie matrix models, Slooten and Ladd (1991) estimated a maximum population growth rate of 0.018 to 0.049; whereas, Secchi and Fletcher (2004) estimated a much lower population growth rate of 0.0065. Projections of population growth, given estimated levels of human-caused mortality, have varied depending on the modelling approach and the study population, but results are generally consistent in indicating a continuing population decline (Slooten and Dawson 2010, Slooten and Davies 2012). Essentially, the available information indicates that population growth is too low to compensate for current mortality rates, and that mortality needs to be reduced in order to allow populations around the South Island to recover from past declines due to bycatch (Slooten 2013).

This demographic factor was rated as posing a "moderate risk" for SI Hector's dolphins.

C. Population Structure and Connectivity

Analyses of both mtDNA and microsatellite DNA indicate the existence of three distinct regional populations of SI Hector's dolphins—east, west, and south coast populations (Pichler et al. 1998, Pichler 2002, Hamner et al. 2012a). Each regional population is characterized by one or two high frequency mtDNA haplotypes, and hierarchical analyses of both mtDNA and microsatellite DNA data indicate strong genetic differentiation among the three regional populations (mtDNA $F_{ST} = 0.321$, $p<0.001$; Phi $_{ST} = 0.395$; microsatellite $F_{ST} = 0.058$, $p<0.001$; Hamner et al. 2012a). There appears to be additional genetic structuring on the south coast, as samples from Te Wæwæ Bay and Toetoe Bay, locations separated by only about 100 km of coastline, were significantly differentiated based on both mtDNA ($F_{ST} = 0.136$, $p = 0.03$) and microsatellite DNA ($F_{ST} = 0.043$, $p = 0.005$). Fine-scale population structuring has also recently been detected in ECSI Hector's dolphins sampled from adjacent populations on either side of Kaikoura Canyon (Hamner et al. 2016). Analysis of both mtDNA ($F_{ST} = 0.081$, $p<0.001$) and microsatellite DNA ($F_{ST} = 0.013$, $p<0.001$) indicated a low but statistically significant level of genetic differentiation between these adjacent populations (Hamner et al. 2016).

Estimated migration rates for males and females among the three main regional populations are low and appear to be asymmetrical (Pichler 2002, Hamner et al. 2012a). Based on mtDNA, Pichler (2002) estimated long-term migration rates of less than one female per generation among regions, except between the west and south coasts where female migration rates were estimated to be between 2.7 and 3.7 female migrants per generation. Based on analyses of both mtDNA and microsatellite DNA, there also appears to be a low level of male-mediated gene flow, with the highest exchange appearing to occur from the south coast to the east coast (Hamner et al. 2012a). Analysis of levels of genetic differentiation among sample locations within regions suggests a "stepping-stone" model of gene flow in which there are low levels of migration between neighboring populations over distances shorter than 100 km and much more limited gene flow among the three larger regional populations (Pichler 2002; Hamner et al. 2012a). Hamner et al. (2012a) concluded that very rare migration events are facilitating gene flow across the roughly 100–370 km distances separating the three larger regions. Overall, these findings are consistent with *a priori* expectations of low gene flow over larger spatial scales given the small estimated home ranges (typically 30 km–60 km) and high degree of site fidelity observed in SI Hector's dolphins (Bejder and Dawson 2001, Bräger et al. 2002, Rayment et al. 2009a). Although longer-range movements (> 400 km) of SI Hector's dolphins do appear to occur, at least on occasion, there is as yet no indication that such movements are associated with mating (Hamner et al. 2012b, Hamner et al. 2014a).

How the existing population structure and connectivity of SI Hector's dolphin populations influence extinction risk is unclear. The current distribution of SI Hector's dolphins as multiple populations with a low level of connectivity could potentially provide protection from local extirpation (for example, by a catastrophic event) while allowing for local adaptation, which could ultimately benefit long-term survival (Franklin 1980). Alternatively, restricted and asymmetrical dispersal among populations may mean there is very limited potential for one population to buffer against the loss of another local population and prevent further fragmentation (Pichler et al. 1998, Pichler 2001). The ongoing human-caused mortality and the slow population growth rate of SI Hector's dolphins are factors that favor this latter interpretation.

Overall, this demographic factor was rated as posing a ''moderate risk'' to SI Hector's dolphins.

D. Genetic Diversity

Relative to other abundant dolphin species, genetic diversity of SI Hector's dolphins is low (Pichler and Baker 2000; Pichler 2002). Pichler and Baker (2000) reported haplotype (h) and nucleotide (π) diversity estimates of 0.35 and 0.0030, respectively, for ECSI Hector's dolphins (n = 46) and 0.66 and 0.0040 for WCSI Hector's dolphins (n = 47), which are low compared to previously reported estimates for other, more abundant odontocetes (*e.g.*, h = 0.70–0.92 and $\pi > 0.01$). Diversity estimates based on mtDNA analyses by Hamner et al. (2012a) were somewhat higher for both the ECSI ($h = 0.51$, $\pi = 0.0039$) and WCSI ($h = 0.72$, $\pi = 0.0049$, n = 154) populations, possibly as a consequence of larger sample sizes, but they are still relatively low. The low genetic diversity observed may reflect restricted gene flow among populations and a consequent increase in genetic drift within populations.

As noted above, analysis of mtDNA samples for ECSI Hector's dolphins by Pichler and Baker (2000) indicated a significant decline in mitochondrial diversity between historical samples from 1870–1987 ($h = 0.65$ and $\pi = 0.0084$, n = 36) and more contemporary samples from 1988–1998 ($h = 0.35$ and $\pi = 0.0030$, n = 46). A trend analysis of mtDNA diversity also indicated full loss of diversity within the next 20 years (Pichler and Baker 2000).

Guidelines commonly cited and applied in conservation biology are that, in a finite population and ignoring other ecological considerations, a minimum effective population size of at least 50 individuals is required to prevent the harmful effects of inbreeding, and an effective population size of at least 500 individuals is required to prevent the accumulation of deleterious recessive alleles and maintain genetic diversity over hundreds of years (Franklin 1980, Soulé 1980, Gilpin and Soulé 1986, Allendorf et al. 1987). Other theoretical analyses, however, suggests that these thresholds are too low and that well over 1,000 breeding adults per generation may instead be necessary to avoid extinction by ''mutational meltdown'' over time periods of 100 or more generations (Lynch et al. 1995). Given that effective population size is often about ⅕ to ⅓ of a population's total size (Frankham 1995), a conservative estimate of the effective population size for SI Hector's dolphins could be roughly estimated as 2,385 to 3,698 dolphins (calculated using ⅕ of the 95 percent CI abundance estimates). Because these rough estimates are well above the thresholds of 50, 500, and 1,000 associated with inbreeding, loss of genetic diversity, and mutational meltdown, we conclude that the SI Hector's dolphin is not at high risk of extinction in the near-term due to its current genetic health.

Given the evidence of low and potentially declining genetic diversity, this demographic factor was rated as being a ''moderate risk.''

Protective Efforts

In addition to the regulatory measures discussed above (*e.g.* fishing and boating regulations, sanctuary designations), we considered other efforts being made to protect Hector's dolphins. We considered whether such protective efforts, as summarized below, alter our findings regarding the status of Maui's and Hector's dolphins.

To help raise awareness and educate boaters about the regulations governing the operation of vessels around marine mammals, the DOC recently initated the 'Sustainable Marine Mammal Actions in Recreation and Tourism'—or SMART program. Commercial operators who participate in the training course through this program are labelled 'SMART operators' and are promoted to tourists as such. A training course for recreational boaters is also available. While this proactive program has likely improved boater awareness and on-the-water behavior to some degree, we have no data to evaluate the extent to which boater-associated impacts on Hector's dolphins have been reduced, and the available information indicates that dolphin-watching and 'swim-with' activities are not benign activities even when conducted according to the existing regulations.

To help minimize fisheries interactions and bycatch, some voluntary practices have been used in some areas around the South Island since 2002. These measures include deployment of pingers and other modifications to fishing activities. However, the extent to which such voluntary measures are being implemented is unclear, and the efficacy of pingers in reducing bycatch of Hector's dolphins has not yet been clearly established (Dawson 1998, Stone et al. 2000b). The MPI also established a hotline for reporting violations of fishing restrictions; however, there are no data available to evaluate whether the hotline has contributed to improved enforcement or compliance with existing fishing regulations.

Although these efforts may be providing measurable protection for Hector's dolphins, there is no indication that these efforts are ameliorating threats, particularly the threats of bycatch and disease, such that the extinction risk of either subspecies is reduced. Therefore, we conclude that these protective efforts do not alter the extinction risk for either Maui's or SI Hector's dolphins. We are not aware of any other conservation measures for these subspecies and are soliciting additional information on any relevant conservation efforts through the public comment process on this proposed rule (see Public Comments Solicited below).

Proposed Listing Determinations

Maui's dolphins are currently at critically low abundance, and face additional demographic risks due to greatly reduced genetic diversity and a low population growth rate. Past declines, on the order of about 90 percent, have been driven largely by bycatch in gillnets. Maui's dolphins continue to face threats of bycatch, disease, and mining and seismic disturbances; and available evidence suggests the population will continue to decline despite existing management protections. We conclude that Maui's dolphin is currently facing a high risk of extinction throughout its range and is likely to become extinct. Therefore, we find that this subspecies meets the definition of an endangered species under the ESA. This conclusion is consistent with previous risk assessments for Maui's dolphin, which have concluded this subspecies is facing an extremely high risk of extinction in the wild and will recover only if sources of anthropogenic mortality are eliminated (Slooten et al. 2006; MFish and DOC 2007b, Baker et al. 2010). Concern over abundance and trends for Maui's dolphin has previously led to its classification as "nationally critical" under the New Zealand Threat Classification System, which is the most threatened status within this classification system (Baker et al. 2010).

Under the New Zealand Threat Classification System, the SI Hector's dolphin has been formally classified as "nationally endangered," which is the second-most threatened status within this classification system (Baker et al. 2010). The qualifier "conservation dependent" is also applied to SI Hector's dolphins, meaning that the subspecies is likely to move to the higher category of "nationally critical" if current management were to cease (Townsend et al. 2008, Baker et al. 2010).

Our review of the best available data indicates that the SI Hector's dolphin has experienced substantial population declines since the 1970s, has relatively low genetic diversity, a low intrinsic population growth rate, and a fragmented population structure. Although historical data are lacking, Slooten (2007a) estimated that the SI Hector's dolphin population has declined by about 73 percent between 1970 and 2007, and available population viability analyses indicate that the SI Hector's dolphin is likely to continue to decline unless bycatch mortality is reduced (Davies et al. 2008, Slooten and Davies 2012, Slooten 2013). Gormley et al. (2012) estimated that the Banks Peninsula population, which has benefited from almost three decades of protection, would continue to decline at a rate of about 0.5 percent per year despite significantly improved survival rates. Assuming an existing population abundance of about 14,849 dolphins (95 percent CI = 11,923–18,492), a constant rate of decline of 0.5 percent per year for the subspecies as a whole could result in a 50 percent decline in the population in about 138 years and an 80 percent decline in about 321 years. These are simply estimates based on the limited data available, however, and they do not establish any specific thresholds for determining when the subspecies may be in danger of extinction throughout all or a significant portion of its range. The actual rate of decline of the subspecies remains unclear given the very limited bycatch mortality data available. A trend analysis based on survey data is also confounded by the fact that surveys have covered different portions of the range and have dramatically increased in sophistication and geographical scope over time. Thus, a precise analysis of the rate of decline and projection of time to extinction given multiple threats and demographic considerations is not currently possible.

Current levels of bycatch are contributing to the decline of this subspecies (Slooten and Davies 2012). Additional, lesser threats, such as disease and tourism impacts, are likely exacerbating the rate of decline and thereby contributing to the overall extinction risk of this subspecies. Given recent abundance estimates for the total population and evidence of a slowed rate of decline following expanded fisheries management measures, we find that this subspecies is not facing an imminent risk of extinction. However, historical declines and the projected decline for most populations, combined with a low population growth rate, low genetic diversity, limited population connectivity, and the ongoing threats of bycatch, disease, and tourism, provide a strong indication that this subspecies is likely to become an endangered species within the foreseeable future assuming a status quo in conservation. We therefore propose to list this subspecies as threatened under the ESA.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include the development and implementation of recovery plans (16 U.S.C. 1533(f)); designation of critical habitat, if prudent and determinable (16 U.S.C. 1533(a)(3)(A)); a requirement that Federal agencies consult with NMFS under section 7 of the ESA to ensure their actions do not jeopardize the species or result in adverse modification or destruction of designated critical habitat (16 U.S.C. 1536); and prohibitions on "taking" (16 U.S.C. 1538). The prohibitions on "take," including export and import, automatically apply to species listed as endangered. Prohibitions on take do not apply to species listed as threatened unless protective regulations are issued under section 4(d) of the ESA (16 U.S.C. 1533(d)). In the case of threatened species, section 4(d) of the ESA leaves it to the Secretary's discretion whether, and to what extent, to extend take prohibitions to the species. Section 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. We are not proposing such regulations at this time but may consider potential protective regulations pursuant to section 4(d) for the SI Hector's dolphin in a future rulemaking.

Recognition of the species' imperiled status through listing may also promote conservation actions by Federal and state agencies, foreign entities, private groups, and individuals.

Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, NMFS and the U.S. Fish and Wildlife Service (USFWS) published a policy (59 FR 34272) that requires us to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the potential effects of species listings on proposed and ongoing activities.

If the Maui's dolphin is listed as endangered, all of the prohibitions of section 9(a)(1) of the ESA will apply to this subspecies. Section 9(a)(1) includes prohibitions against the import, export, use in foreign commerce, and "take" of the listed species. These prohibitions apply to all persons subject to the jurisdiction of the United States, including in the United States, its territorial sea, or on the high seas. Take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Activities that could result in a violation of section 9 prohibitions for Maui's dolphins include, but are not limited to, the following:

(1) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any individual or part, in the course of a commercial activity;

(2) Selling or offering for sale in interstate commerce any part, except antique articles at least 100 years old; and

(3) Importing or exporting Maui's dolphins or any parts of these dolphins.

Whether a violation results from a particular activity is entirely dependent upon the facts and circumstances of each incident. Further, an activity not listed here may in fact constitute a violation.

Section 7 Conference and Consultation Requirements

Section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and joint NMFS/USFWS regulations require Federal agencies to consult with NMFS to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. Section 7(a)(4) (16 U.S.C. 1536(a)(4)) of the ESA and NMFS/USFWS regulations also require Federal agencies to confer with us on actions likely to jeopardize the continued existence of species proposed for listing, or that are likely to result in the destruction or adverse modification of proposed critical habitat of those species. It is unlikely that the listing of these subspecies under the ESA will increase the number of section 7 consultations, because these subspecies occur outside of the United States and are unlikely to be affected by Federal actions.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed if such areas are determined to be essential for the conservation of the species. Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, critical habitat cannot be designated in foreign countries or other areas outside U.S. jurisdiction (50 CFR 424.12(g)). Maui's and SI Hector's dolphins are endemic to New Zealand and do not occur within areas under U.S. jurisdiction. There is no basis to conclude that any unoccupied areas under U.S. jurisdiction are essential for the conservation of either subspecies. Therefore, we do not intend to propose any critical habitat designations for either subspecies.

Public Comments Solicited

We must base our final listing determination on the best scientific and commercial data available. We cannot consider the economic effects of a listing determination. To help ensure that any final action resulting from this proposed rule will be accurate and based on the best available data, we are soliciting comments from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties on the draft status review report and proposed rule. See **DATES** and **ADDRESSES** for information on how to submit comments.

Promulgation of any final regulation to list these subspecies will take into consideration the comments and any additional data we receive during the comment period, and this process may lead to a final regulation that differs from this proposal. We are especially seeking information regarding the following topics:

(1) New or updated data regarding threats to Maui's and SI Hector's dolphins, especially bycatch rates in commercial and recreational fisheries, bycatch in fishing gear types other than gillnets, compliance with fishing regulations, and trends in disease prevalence;

(2) New or updated population viability analyses that reflect the most recent abundance estimates for the subspecies;

(3) Current or planned activities within the range of these subspecies and their possible impacts on these species; and,

(4) Conservation efforts that are addressing threats to either subspecies.

We request that all information be accompanied by: (1) Supporting documentation, such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing a minimum peer review standard. We solicited peer review comments on the draft status review report (Manning and Gantz 2016) from three scientists with expertise on Hector's dolphins. We received and reviewed comments from these scientists, and their comments are incorporated into the draft status review report and this proposed rule. Their comments on the status review are summarized in the peer review report and available at *www.cio.noaa.gov/services_programs/prplans/PRsummaries.html.*

References

A complete list of the references used in this proposed rule is available upon request (see **ADDRESSES**).

Classification

National Environmental Policy Act

Section 4(b)(1)(A) of the ESA restricts the information that may be considered when assessing species for listing and sets the basis upon which listing determinations must be made. Based on the requirements in section 4(b)(1)(A) of the ESA and the opinion in *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process.

In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this proposed rule does not have significant federalism effects and that a federalism assessment is not required. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, this proposed rule will be given to the relevant governmental agencies in New Zealand, and they will be invited to comment. We will confer with the U.S. Department of State to ensure appropriate notice is given to New Zealand. As the process continues, we intend to continue engaging in informal and formal contact with the U.S. State Department, giving careful consideration to all written and oral comments received.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Transportation.

50 CFR Part 224

Endangered and threatened species, Exports, Imports, Transportation.

Dated: September 13, 2016.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend 50 CFR parts 223 and 224 as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, amend the table in paragraph (e) by adding an entry under "Marine Mammals" in alphabetical order, by common name, to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species[1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Marine Mammals					
Dolphin, Hector's	*Cephalorhynchus hectori hectori.*	Entire subspecies	[**Federal Register** Citation and Date When Published as a Final Rule].	NA	NA
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C 1361 *et seq.*

■ 4. In § 224.101, amend the table in paragraph (h) by adding an entry under "Marine Mammals" in alphabetical order, by common name, to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) * * *

Species[1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Marine Mammals					
*	*	*	*	*	*
Dolphin, Maui's	*Cephalorhynchus hectori maui.*	Entire subspecies	[**Federal Register** Citation and Date When Published as a Final Rule].	NA	NA
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

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[FR Doc. 2016–22451 Filed 9–16–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 181
Monday, September 19, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Beginning Farmers and Ranchers Advisory Committee

AGENCY: Office of Advocacy and Outreach, USDA.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Office of Advocacy and Outreach (OAO) is announcing a meeting of the Beginning Farmers and Ranchers Advisory Committee (BFRAC). The committee is being convened to consider issues involving barriers for beginning farmers and ranchers, including lending and access to U.S. Department of Agriculture (USDA) programs, resources, and land. The members will deliberate on recommendations to be prepared for USDA Secretarial consideration.

DATES: The committee meeting is scheduled for Thursday and Friday, September 29 and 30, 2016, from 8:30 a.m.–4:30 p.m. CST at the Cleveland Airport Marriott in Cleveland, Ohio. The meeting will be open to the public. All persons wishing to make comments during this meeting must check in between 8:30 a.m. and 9:30 a.m., and between 2:00 p.m. and 3:00 p.m. CST, on both days, at the registration table. All public commenters will be allowed a maximum of three minutes. If the number of registrants requesting to speak is greater than what can be reasonably accommodated during the scheduled open public meeting timeframe, speakers will be scheduled on a first-come basis. Public written comments for the committee's consideration may be submitted by close of business on September 22, 2016, to Mrs. Kenya Nicholas, Designated Federal Official, USDA OAO, 1400 Independence Avenue SW., Room 520–A, Washington, DC 20250–0170, Phone (202) 720–6350, Fax (202) 720–7704, Email: *acbfr@osec.usda.gov.* Written submissions are encouraged to either be less than one page in length, or be accompanied by an executive summary and a summary of policy initiatives.

A listen-only line will be available during the entire meeting for all who wish to listen in on the meeting or make public comments through the following telephone number: 1 (888) 790–3101 and enter passcode 6995865. Members of the public may also submit written comments for consideration to the committee via email at: *acbfr@osec.usda.gov* or fax to: (202) 720–7136.

ADDRESSES: This public advisory committee meeting will be held at the Cleveland Airport Marriott, 4277 West 150th Street, Cleveland, Ohio 44135. There will also be signs directing attendees to the meeting room.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Phyllis Morgan, Executive Assistant, OAO, 1400 Independence Avenue SW., Whitten Building, Room 520–A, Washington, DC 20250, Phone: (202) 720–6350; Fax: (202) 720–7704; email: *Phyllis.Morgan@osec.usda.gov.*

SUPPLEMENTARY INFORMATION: The BFRAC last met in Kansas City, Missouri, on August 3–4, 2015. The Secretary tasked the BFRAC with providing recommendations on access to land, farm business transition, and land tenure. They also considered issues around lending and credit in parsing statistics generated by USDA. Please visit our Web site at: *http://www.outreach.usda.gov/smallbeginning/index.htm* for additional information on the BFRAC.

The public is asked to pre-register for the meeting by midnight on September 23, 2016. You may pre-register for the public meeting by submitting an email to *acbfr@osec.usda.gov* with your name, organization or affiliation, or any comments for the committee's consideration. You may also fax this information to (202) 720–7704. Members of the public who wish to make comments during the committee meeting must register at the check-in table.

The agenda is as follows: Day 1: Committee discussions and public comments; Day 2: Committee discussions, public comments, and continued committee deliberations. Please visit the Beginning Farmers and Ranchers Advisory Committee Web site for the full agenda. All agenda topics and documents will be made available to the public by September 23, 2016, at: *http://www.outreach.usda.gov/smallbeginning/index.htm.* Copies of the agenda will also be distributed at the meeting.

Meeting Accommodations: USDA is committed to ensuring that everyone is accommodated in our work environment, programs, and events. If you are a person with a disability and request reasonable accommodations to participate in this meeting, please note the request in your registration and you may contact Mrs. Kenya Nicholas in advance of the meeting by or before noon on September 23, 2016, by phone at (202) 720–6350, fax (202) 720–7704, or email: *kenya.nicholas@osec.usda.gov.*

Dated: September 13, 2016.

Christian Obineme,

Associate Director, Office of Advocacy and Outreach.

[FR Doc. 2016–22406 Filed 9–16–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Grain Inspection, Packers and Stockyards Administration (GIPSA) Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets annually to advise the GIPSA Administrator on the programs and services that GIPSA delivers under the U.S. Grain Standards Act. Recommendations by the Advisory Committee help GIPSA better meet the needs of its customers who operate in a dynamic and changing marketplace.

DATES: October 19, 2016, 8:00 a.m. to 4:30 p.m.; and October 20, 2016, 8:00 a.m. to Noon.

ADDRESSES: The Advisory Committee meeting will take place at the Albers Mill Building, 1200 NW Naito Parkway, Suite 240, Portland, Oregon 97209.

Requests to orally address the Advisory Committee during the meeting or written comments may be sent to: Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601. Requests and comments may also be faxed to (202) 690–2173.

FOR FURTHER INFORMATION CONTACT: Terri L. Henry by phone at (202) 205–8281 or by email at *Terri.L.Henry@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee is to provide advice to the GIPSA Administrator with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71–87k). Information about the Advisory Committee is available on the GIPSA Web site at *http://www.gipsa.usda.gov/fgis/adcommit.html.*

The agenda will include service delivery overview, quality assurance and compliance updates, field management overview, international program updates as they relate to outreach, and technology and science initiatives.

For a copy of the agenda please contact Terri L. Henry by phone at (202) 205–8281 or by email at *Terri.L.Henry@usda.gov.*

Public participation will be limited to written statements unless permission is received from the Committee Chairperson to orally address the Advisory Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri L. Henry at the telephone number listed above.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–22444 Filed 9–16–16; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

[Docket No. 160907830–6830–01]

Privacy Act System of Records, Amended System of Records

AGENCY: U.S. Department of Commerce, Office of the Secretary.

ACTION: Notice of an Amended Privacy Act System of Records: "COMMERCE/DEPT–25, Access Control and Identity Management System."

SUMMARY: In accordance with the Privacy Act of 1974, as amended, Title 5 United States Code (U.S.C.) 552a(e)(4) and (11); and Office of Management and Budget (OMB) Circular A–130, Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals, the Department of Commerce proposes to amend the system of records entitled: "COMMERCE/DEPT–25, Access Control and Identity Management System." Based on a review of the system of records notice, the Department is making necessary administrative updates to the sections entitled "SYSTEM LOCATION," "SECURITY CLASSIFICATION," and "NOTIFICATION PROCEDURE."

DATES: The system of records becomes effective on September 19, 2016.

ADDRESSES: For a copy of the system of records please mail requests to: Michael J. Toland, Deputy Chief Freedom of Information Act (FOIA) Officer and Department Privacy Act Officer, Office of Privacy and Open Government, 1401 Constitution Ave. NW., Room 52010, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Michael J. Toland, Deputy Chief FOIA Officer and Department Privacy Act Officer, Office of Privacy and Open Government, 1401 Constitution Ave. NW., Room 52010, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On May 8, 2015, the Department published a proposed new Privacy Act system of records notice in the **Federal Register** (80 FR 26534) entitled: "COMMERCE/DEPT–25, Access Control and Identity Management System." The system serves to provide electronic physical access control, intrusion detection and video management solutions to ensure the safety and security of the Department's assets to include people, facilities, information and property. The system controls access to only those authorized as well as aids in the monitoring, assessment and response to security and emergency related incidents.

As a result of the Department's internal review of the notice covering this system of records, we became aware that the National Technical Information Service was not included under the "SYSTEM LOCATION" and "NOTIFICATION PROCEDURE" sections. We also became aware that incorrect information was provided for the "SECURITY CLASSIFICATION" section. For the aforementioned reasons, the Department publishes a notice of an amended system of records entitled: "COMMERCE/DEPT–25, Access Control and Identity Management System," as published in the **Federal Register** on May 8, 2015 (80 FR 26534).

OMB Circular A–130, Appendix I, indicates that minor changes to systems of records need not be reported. In this notice, we are making minor changes to the "COMMERCE/DEPT–25, Access Control and Identity Management System" system of records. Therefore, the Department has not filed a report describing the altered system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, or the Administrator of the Office of Information and Regulatory Affairs, OMB.

COMMERCE/DEPT–25

SYSTEM NAME:

Access Control and Identity Management System.

SECURITY CLASSIFICATION:

Unclassified, sensitive, for official use only, and classified.

SYSTEM LOCATION:

a. For Office of Security, Office of the Secretary, U.S. Department of Commerce, Room 1033, 1401 Constitution Avenue NW., Washington, DC 20230.

b. For Office of Security, U.S. Census Bureau, Room 2J438, 4600 Silver Hill Road, Washington, DC 20233–3700.

c. For Office of Security, U.S. Census Bureau Indiana, Room 104, Building 66, 1201 E. 10th Street, Jeffersonville, IN 47132.

d. For Office of Security, National Institute of Standards and Technology, Room A–105, Building 318, 100 Bureau Drive, Gaithersburg, MD 20899.

e. For Office of Security, National Oceanic and Atmospheric Administration, Room G–101, SSMC–OFA543, 1335 East-West Highway, Silver Spring, MD 20910.

f. For Office of Security, National Oceanic and Atmospheric Administration, Western Region, Building 1, 7600 Sand Point Way NE., Seattle, WA 38115.

g. For Office of Security, FirstNet, John W. Powell Federal Building, 12201 Sunrise Valley, Drive, Reston, VA 22091.

h. For Office of Security, U.S. Patent and Trademark Office, 600 Dulany Street, Madison Building, West, Alexandria, VA 22313.

i. For Office of the Secretary, Minority Business Development Agency, Economic and Statistics Administration, and Economic Development Administration: Office of the Secretary, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

j. For U.S. Census Bureau, Chief Information Officer, 4600 Silver Hill Road, Suitland, MD 20746.

k. For Bureau of Industry and Security, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

l. For International Trade Administration, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

m. For National Institute of Standards and Technology, Chief Information Officer, 100 Bureau Drive, Gaithersburg, MD 20899.

n. For National Telecommunications and Information Administration, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

o. For National Oceanic and Atmospheric Administration, Chief Information Officer, 1305 East-West Highway, SSMC3, Silver Spring, MD 20910.

p. For U.S. Patent and Trademark Office, Chief Information Officer, 600 Dulany Street, Madison Building, Alexandria, VA 22314.

q. For Office of Inspector General, Chief Information Officer, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

r. For National Technical Information Service, Office of the Chief Information Officer, Security Division, 5301 Shawnee Road., Alexandria, VA 22312.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, contractors, and other affiliates requiring access to Department of Commerce electronic (including PKI-authenticated) and physical assets.

CATAGORIES OF RECORDS IN THE SYSTEM:

Records may include the individual's name; organization; work telephone number; cellular telephone number; home telephone number, work email; Federal agency Smart Card Number (FASC–N); social security number; employee number; status as an employee, contractor or other affiliation with the Department of Commerce; PIN number (encrypted); sign-in/out, badge-in/out, time-in/out, log-in/out data; computer transaction data to include, but not limited to, key stroke monitoring; IP address of access; logs of internet activity and records on the authentication of the access request; key fob identifier; token identifier; Personal Identity Verification (PIV) Card identifier; computer access login name; and any computer generated identifier assigned to a user.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 35 U.S.C. 2; the Electronic Signatures in Global and National Commerce Act, Public Law 106–229; 28 U.S.C. 533–535; 44 U.S.C. 1301; Homeland Security Presidential Directive 12 and IRS Publication-1075.

PURPOSES:

Records in this system are used by authorized personnel to improve security for Department of Commerce physical facilities for purposes including: Ensuring process integrity; enabling employees to carry out their lawful and authorized responsibilities; verifying individuals' authorization to access buildings and facilities; creating a record of individuals' access to buildings and facilities; facilitating the issuance and retrieval of visitor and temporary badges; and providing statistical data on building and facility access patterns including electronic and physical sign/badge-in and sign/badge-out data for resource planning and emergency management purposes.

Records may also be used to secure electronic assets; to maintain accountability for issuance and disposition of security access; to maintain an electronic system to facilitate secure on-line communication between Federal automated systems, between Federal employees or contractors, and with the public, using digital signature technologies to authenticate and verify identity; to provide a means of access to electronic assets, desktops, and laptops; and to provide mechanisms for non-repudiation of personal identification and access to electronic systems, including but not limited to human resource, financial, procurement, travel and property systems, as well as systems containing information on intellectual property and other mission critical systems. The system also maintains records relating to the issuance of digital certificates utilizing public key cryptography to employees and contractors for the transmission of sensitive electronic material that requires protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. Records in this system are accessed on a daily basis by authorized personnel to verify individuals' authorized access to buildings and facilities; electronic systems and computers; facilitate the issuance and retrieval of visitor and temporary badges; determine whether administrative action (including disciplinary action) should be taken regarding any employee, contractor, or visitor; and provide statistical data on computer information systems, building and facility access patterns including electronic and physical sign/badge-in and sign/badge-out data for resource planning, emergency management purposes, assuring the security of computer information systems, and implementing Executive Order 13587.

2. In the event that a system of records maintained by the Department to carry out its functions indicates or relates to a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or where necessary to protect an interest of the Department, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

3. A record from this system of records may be disclosed to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

4. A record from this system of records may be disclosed to a Federal, state, local, or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

6. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has

requested assistance from the Member with respect to the subject matter of the record.

7. A record in this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

9. A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

10. A record in this system may be transferred to the Office of Personnel Management for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

11. A record from this system of records may be disclosed to the Administrator, General Services, or his designee, during an inspection of records conducted by the General Services Administration as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

12. A record in this system of records may be disclosed to appropriate agencies, entities and persons when (1) it is suspected or determined that the security or confidentiality of information in the system of records has been compromised; (2) the DOC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or whether systems or programs (whether maintained by the DOC or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DOC's efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

13. A record in this system of records may be disclosed to appropriate agencies, entities and persons for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are on paper and/or in digital or other electronic form. Paper records are stored in secure rooms and storage cabinets and electronic records are stored as electronic/digital media and stored in secure file-servers within controlled environment. Both paper and electronic/digital records are accessed only by authorized personnel.

RETRIEVABILITY:

Records are retrieved by individual's name, employment status, organization and/or security access badge number, or other Department of Commerce identifier. Information may be retrieved from this system of records by automated search based on extant indices and automated capabilities utilized in the normal course of business.

SAFEGUARDS:

Entrance to data centers and support organization offices is restricted to those employees whose work requires them to be there for the system to operate. Identification cards are verified to ensure that records are in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Disclosure of electronic information through remote terminals is restricted through the use of passwords and sign-on protocols that are periodically changed. Reports produced from the remote printers are subject to the same privacy controls as other documents of like sensitivity. Electronic and digital certificates ensure secure local and remote access and allow only authorized employees, contractor employees, or other affiliated individuals to gain access to federal information assets available through secured systems access.

Access to sensitive records is available only to authorized employees and contractor employees responsible for the management of the system and/or employees of program offices who have a need for such information. Electronic records are password-protected or PKI-protected, consistent with the requirements of the Federal Information Security Management Act (Pub. L. 107–296), and associated OMB policies, standards and guidance from the National Institute of Standards and Technology, and the General Services Administration; all records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards.

Access is restricted on a ''need to know'' basis, utilization of PIV Card access, secure VPN for Web access, and locks on doors and approved storage containers. Buildings have security guards and secured doors. Entrances are monitored through electronic surveillance equipment.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with the appropriate records disposition schedule approved by the Archivist of the United States.

SYSTEM MANGER(S) AND ADDRESS:

System managers are the same as stated in the System Location section above.

NOTIFICATION PROCEDURE:

An individual requesting notification of existence of records on himself or herself should send a signed, written inquiry to the locations listed below. The request letter should be clearly marked, ''PRIVACY ACT REQUEST.'' The written inquiry must be signed and notarized or submitted with certification of identity under penalty of perjury. Requesters should reasonably specify the record contents being sought.

For records at locations a., g., and i.: Departmental Freedom of Information and Privacy Act Officer, Room 52010, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

For records at locations b., c., and j.: U.S. Census Bureau, Freedom of Information and Privacy Act Officer, Room 8H027, 4600 Silver Hill Road, Washington, DC 20233–3700.

For records at locations d. and m.: National Institute of Standards and Technology, Freedom of Information and Privacy Act Officer, Room 1710, 100 Bureau Drive, Gaithersburg, MD 20899.

For records at locations e., f., and o.: National Oceanic and Atmospheric

Administration, Freedom of Information and Privacy Act Officer, Room 9719, SSMC3, 1315 East-West Highway, Silver Spring, MD 20910.

For records at locations h. and p.: U.S. Patent and Trademark Office, Freedom of Information and Privacy Act Officer, 600 Dulany Street, Madison Building, East, Room 10B20, Alexandria, VA 22313.

For records at location k.: Bureau of Industry and Security, Freedom of Information and Privacy Act Officer, Room 6622, 1401 Constitution Avenue NW., Washington, DC 20230.

For records at location l.: International Trade Administration, Freedom of Information and Privacy Act Officer, Room 40003, 1401 Constitution Avenue NW., Washington, DC 20230.

For records at location n.: National Telecommunications and Information Administration, Freedom of Information and Privacy Act Officer, Room 4713, 1401 Constitution Avenue NW., Washington, DC 20230.

For records at location q.: Office of Inspector General, Freedom of Information and Privacy Act Officer, Room 7892, 1401 Constitution Avenue NW., Washington, DC 20230.

For records at location r.: National Technical Information Service, Freedom of Information Act Officer, 5301 Shawnee Road, Alexandria, VA 22312.

RECORD ACCESS PROCEDURES:

An individual requesting access to records on himself or herself should send a signed, written inquiry to the same address as stated in the Notification Procedure section above. The request letter should be clearly marked, "PRIVACY ACT REQUEST." The written inquiry must be signed and notarized or submitted with certification of identity under penalty of perjury. Requesters should specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

An individual requesting corrections or contesting information contained in his or her records must send a signed, written request inquiry to the same address as stated in the Notification Procedure section above. Requesters should reasonably identify the records, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. The Department's rules for access, for contesting contents, and for appealing initial determination by the individual concerned appear in 15 CFR part 4, Appendix B.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by: The subject individual of the record, supervisors, other personnel documents, other Department systems, access log records and sensors and non-Federal sources such as private employers and their agents, along with those authorized by the individuals to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5), all information and material in the record which meets the criteria of these subsections are exempted from the notice, access, and contest requirements under 5 U.S.C. 552a(c)3, (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent disclosure of classified information as required by Executive Order 12958, as amended by Executive Order 13292, to assure the protection of the President, to prevent subjects of investigation from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of information, and to avoid endangering these sources and law enforcement personnel.

Dated: September 14, 2016.

Michael J. Toland,

Department of Commerce, Deputy Chief FOIA Officer, Department Privacy Act Officer.

[FR Doc. 2016–22469 Filed 9–16–16; 8:45 am]

BILLING CODE 3510–BX–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–59–2016]

Foreign-Trade Zone 122—Corpus Christi, Texas; Application for Expansion of Subzone 122J; Valero Refining Company; Nueces County, Texas

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting an expansion of Subzone 122J on behalf of Valero Refining Company. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on September 12, 2016.

Subzone 122J was approved on December 21, 1988 (Board Order 414, 53 FR 53041, December 30, 1988). The subzone currently consists of three sites located in Nueces County: *Site 1* (381 acres)—refinery complex located at 5900 Up River Road, Corpus Christi; *Site 2* (230 acres)—refinery complex located at 1300 Cantwell Lane, Corpus Christi; and, *Site 3* (16 acres)—coke pad located adjacent to Site 2.

The applicant is requesting authority to expand Site 1 of the subzone to include an adjacent parcel (6.7 acres) located at 6601 Up River Road in Corpus Christi. No additional authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is October 31, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 14, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: September 12, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–22401 Filed 9–16–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–39–2016]

Foreign-Trade Zone (FTZ) 119—Minneapolis, Minnesota Authorization of Production Activity SICK, Inc.; (Electronic Industrial Sensors, Encoders, Optical Readers and Monitoring Systems) Savage, Minnesota

On May 17, 2016, the Greater Metropolitan Area Foreign-Trade Zone

Commission, grantee of FTZ 119, submitted a notification of proposed production activity to the FTZ Board on behalf of Sick, Inc., within Subzone 119G, in Savage, Minnesota.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 37570, June 10, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: September 13, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–22399 Filed 9–16–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–60–2016]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico; Notification of Proposed Production Activity; MSD International GMBH (Puerto Rico Branch) LLC; Subzone 7G (Pharmaceuticals) Las Piedras, Puerto Rico

MSD International GMBH (Puerto Rico Branch) LLC (MSD), operator of Subzone 7G, submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 7G, in Las Piedras, Puerto Rico. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 29, 2016.

MSD currently has authority to produce certain pharmaceutical products and their intermediates within Subzone 7G. The current request would add a finished pharmaceutical product and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt MSD from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, MSD would be able to choose the duty rate during customs entry procedures that applies to finished ertugliflozin/metformin pharmaceutical tablets for the treatment of type-2 diabetes (duty free) for the foreign-status materials/components noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Metformin hydrochloride and jet-milled ertugliflozin active ingredients (duty rates 3.7% and 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is October 31, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: September 13, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–22480 Filed 9–16–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department preliminarily determines that none of the mandatory respondents in this review qualify for a separate rate and are, therefore, considered a part of the Vietnam-Wide Entity for their exports of subject merchandise exported to the United States during the period of review ("POR") August 1, 2014, through July 31, 2015. If these preliminary results are adopted in the final results, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Effective September 19, 2016.

FOR FURTHER INFORMATION CONTACT: Kenneth Hawkins or Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202–482–6491 or 202–482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2014, the Department initiated the 12th administrative review of the antidumping duty order on fish fillets from Vietnam for the period August 1, 2014, through July 31, 2015.[1] On May 4, 2016, the Department partially extended the deadline for issuing the preliminary results by 118 days.[2] The revised deadline for the preliminary results of this administrative review is now September 6, 2016.

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus.* These products are classifiable under tariff article code 0304.62.0020 (Frozen Fish Fillets of the species *Pangasius,* including basa and tra), and may enter under tariff article codes 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100 of the Harmonized Tariff Schedule of the United States ("HTSUS").[3] Although

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 60356 (October 6, 2015).

[2] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations regarding, from, Kenneth Hawkins, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, "Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of 2014–2015 Antidumping Duty Administrative Review," dated May 4, 2016.

[3] Until June 30, 2004 these products were classifiable under HTSUS 0304.20.6030, 0304.20.6096, 0304.20.6043 and 0304.20.6057. From July 1, 2004 until December 31, 2006 these products were classifiable under HTSUS 0304.20.6033. From January 1, 2007 until December

Continued

the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.[4]

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Between December 30, 2015 and January 4, 2016 we received timely withdrawal of review requests for 62 companies from Petitioner,[5] Bien Dong Seafood Co., Ltd ("Bien Dong"), and Vinh Hoan Corporation ("Vinh Hoan").[6] Of these 62 companies, 38 do not have any review request outstanding. Therefore, in accordance with 19 CFR 351.213(d)(1), the Department is rescinding this review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam with respect to these 38 companies.[7] In addition the Department is rescinding the review for two additional companies.[8] The review will continue with respect to the other firms for which a review was requested and initiated.

Preliminary Determination of No Reviewable Transactions

The Department has preliminarily determined that Ben Tre Aquaproduct Import and Export Joint Stock Company, CADOVIMEX II Seafood Import Export and Processing Joint Stock Company, and Hoang Long Seafood Processing Company Limited had no reviewable transactions during the POR. Consistent with our practice in non-market economy ("NME") cases, we will not to rescind the review, in part, in this circumstance, but rather, complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of the review.[9]

Methodology

The Department is conducting this review in accordance with sections 751(a)(1)(B) and 751(a)(2)(A) of the Tariff Act of 1930, as amended ("the Act"). Constructed export prices and export prices have been calculated in accordance with section 772 of the Act. Because Vietnam is an NME within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the period August 1, 2013, through July 31, 2014:

Exporter	Weighted-average margin (dollars/kilogram)[10]
Cuu Long Fish Joint Stock Company *	0.69
GODACO Seafood Joint Stock Company *	0.69
Green Farms Seafood Joint Stock Company *	0.69
NTSF Seafoods Joint Stock Company *	0.69
Vietnam-Wide Entity[11]	2.39

* These companies are separate rate respondents not individually examined.

Disclosure, Public Comment & Opportunity To Request a Hearing

The Department will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[12] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[13] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[14] Parties submitting briefs should do so pursuant to the Department's electronic filing system, ACCESS.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street

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31, 2011 these products were classifiable under HTSUS 0304.29.6033. On March 2, 2011 the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection ("CBP") that the subject merchandise may enter under: 1604.19.2000 and 1604 19.3000, which were changed to 1604.19.2100 and 1604.19.3100 on January 1, 2012. On January 1, 2012 the Department added the following HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

[4] For a complete description of the scope of the order, *see* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of the 11th Antidumping Duty Administrative Review; 2013–2014," at 2–3 ("Issues and Decision Memorandum"), dated concurrently with and hereby adopted by this notice.

[5] Catfish Farmers of America and individual U.S. catfish processors America's Catch, Alabama Catfish Inc. dba Harvest Select Catfish, Inc., Heartland Catfish Company, Magnolia Processing, Inc. dba Pride of the Pond, and Simmons Farm Raised Catfish, Inc. (hereinafter, "Petitioner").

[6] *See, e.g.,* Letter from Bien Dong Seafood regarding Frozen Fish Fillets from the Socialist Republic of Vietnam: Withdrawal of Request for Administrative Review—Bien Dong Seafood Co., Ltd., dated December 30, 2015; Letter from Petitioner regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Withdrawal of Request for Antidumping Duty Administrative Review, dated January 4, 2016; Letter from Vinh Hoan regarding Frozen Fish Fillets from the Socialist Republic of Vietnam: Withdraw of Request for Administrative Review—Vinh Hoan Corporation, dated January 4, 2016.

[7] *See* Appendix II for a full list of rescinded companies.

[8] *See* Issues and Decision Memorandum at 4.

[9] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–65695 (October 24, 2011).

[10] In the third administrative review of this order, the Department determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479 (March 24, 2008).

[11] The Vietnam-wide entity includes mandatory respondents Golden Quality Seafood Corporation, Thuan An Production Trading and Service Co., Ltd. and Viet Phu Foods and Fish Corporation.

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d)(1)–(2).

[14] *See* 19 CFR 351.309(c)(2), (d)(2).

and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined. *See* 19 CFR 351.310(d). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[15] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For any individually examined respondent whose weighted average dumping margin is above *de minimis* (*i.e.*, 0.50 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis*, the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[16] Where either a respondent's weighted average dumping margin is zero or *de minimis*, or an importer- (or customer-) specific *ad valorem* is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[17]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Vietnam exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the Vietnam-wide entity; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporter that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This preliminary determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 6, 2016.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Case History
3. Scope of the Order
4. Discussion of the Methodology
   a. Partial Rescission
   b. Selection of Respondents
   c. Preliminary Determination of No Reviewable Transactions
   d. NME Country Status
   e. Separate Rates
5. Recommendation

Appendix II

(1) An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish or AnGiang Fisheries Import and Export)
(2) An My Fish Joint Stock Company (also known as Anmyfish or Anmyfishco)
(3) An Phat Seafood Co. Ltd.
(4) An Phu Seafood Corp. (also known as ASEAFOOD)
(5) Anvifish Co., Ltd.
(6) Asia Commerce Fisheries Joint Stock Company (also known as Acomfish JSC or Acomfish)
(7) Asia Pangasius Company Limited
(8) Bentre Forestry and Aquaproduct Import Export Joint Stock Company (also known as Ben Tre Forestry and Aquaproduct Import-Export Company or Ben Tre Forestry Aquaproduct Import-Export Company or Ben Tre Frozen Aquaproduct Export Company or Faquimex)
(9) Binh An Seafood Joint Stock Co.
(10) C.P. Vietnam Corporation
(11) Cafatex Corporation (CAFATEX)
(12) Can Tho Animal Fishery Products Processing Export Enterprise (also known as Cafatex)
(13) Europe Joint Stock Company
(14) Hiep Thanh Seafood Joint Stock Co.
(15) Hoang Long Seafood Processing Co., Ltd. (HLS)
(16) Hung Vuong Corporation
(17) Hung Vuong Joint Stock Company
(18) Hung Vuong Mascato Company Limited
(19) Hung Vuong-Sa Dec Co. Ltd.
(20) Hung Vuong-Vinh Long Co., Ltd.
(21) International Development & Investment Corporation (IDI)
(22) Lian Heng Investment Co., Ltd. (also known as Lian Heng)
(23) Lian Hengg Trading Co., Ltd. (also known as Lian Heng)
(24) Nam Viet Company Ltd.
(25) Ngoc Ha Co., Ltd. Food Processing and Trading
(26) Nha Trang Seafoods, Inc. (also known as Nha Trang Seafoods-F89 or Nha Trang Seafoods)
(27) Quang Minh Seafood Co., Ltd.
(28) Seafood Joint Stock Company No. 4-Branch Dong Tam Fisheries Processing Company (DOTASEAFOODCO)
(29) Southern Fisheries Industries Company, Ltd. (also known as South Vina)
(30) Southern Fishery Industries Company, Ltd. (also known as South Vina)
(31) Sunrise Corporation
(32) TG Fishery Holdings Corporation (also known as TG)
(33) Thanh Hung Co., Ltd. (also known as Thanh Hung Frozen Seafood Processing Import Export Co., Ltd. or Thanh Hung)
(34) Thien Ma Seafood Co., Ltd. (also known as THIMACO)
(35) Thien Ma Seafoods Co., Ltd. (also known as THIMACO)
(36) Thien Phat Seafood Co., Ltd.
(37) Thuan An Production Trading and Services Co., Ltd. (TAFISHCO)
(38) Thuan Hung Co., Ltd. (also known as THUFICO)
(39) Vinh Long Import-Export Company (also known as Vinh Long or Imex Cuu Long)
(40) Vinh Quang Fisheries Joint-Stock Company

[FR Doc. 2016–22386 Filed 9–16–16; 8:45 am]

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[15] *See* 19 CFR 351.212(b).

[16] *See* 19 CFR 351.212(b)(1).

[17] *See* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–811]

Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation; Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 13, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on solid fertilizer grade ammonium nitrate (ammonium nitrate) from the Russian Federation. We invited interested parties to comment; we received no comments or requests for a hearing. Therefore, for the final results, we continue to find that sales of subject merchandise by JSC Acron and its affiliate JSC Dorogobuzh (collectively, Acron) have not been made at prices below normal value (NV) during the period of review (POR). Further, we continue to find that MCC EuroChem and its affiliates OJSC NAK Azot and OJSC Nevinnomyssky Azot (collectively, EuroChem) made no shipments of subject merchandise during the POR.

DATES: Effective September 19, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874, or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION: On May 13, 2016, the Department published the *Preliminary Results*.[1] The POR is April 1, 2014, through March 31, 2015. We invited interested parties to comment on the *Preliminary Results.* We received no comments or requests for a hearing. The Department conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to this order is solid, fertilizer grade ammonium nitrate products. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3102.30.00.00 and 3102.290000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise within the scope is dispositive.[2]

Final Results of Review and Final Determination of No Shipments

As noted above, the Department received no comments concerning the *Preliminary Results* on the record of this segment of the proceeding. As there are no changes from, or comments upon, the *Preliminary Results,* the Department finds that there is no reason to modify its analysis. Thus, we continue to find that sales of subject merchandise by Acron were not made at less than NV during the POR. Further, we continue to find that EuroChem made no shipments of subject merchandise during the POR. Accordingly, no decision memorandum accompanies this **Federal Register** notice. For further details of the issues addressed in this proceeding, *see* the *Preliminary Results* and the accompanying Preliminary Decision Memorandum. The final weighted-average dumping margin for the period April 1, 2014, through March 31, 2015 for Acron is as follows:

Producer/exporter	Weighted-average dumping margin (percent)
JSC Acron/JSC Dorogobuzh	0.00

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in this review, in accordance with 19 CFR 351.212(b). The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review. Because we have calculated a zero margin for Acron, the only respondent with entries of subject merchandise during the POR, in the final results of this review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The Department clarified its "automatic assessment" regulation on May 6, 2003.[3] This clarification applies to entries of subject merchandise during the POR produced and exported by Acron or EuroChem for which Acron or EuroChem did not know that the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR if there is no rate for the intermediate company(ies) involved in the transaction.[4]

Cash Deposit Requirements

The Department notified CBP to discontinue the collection of cash deposits on entries of the subject merchandise, entered or withdrawn from warehouse, on or after August 20, 2016.[5] Therefore, no cash deposit requirements will be imposed in response to these final results.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

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[1] *See Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation; Preliminary Results of Antidumping Duty Administrative Review; Preliminary Determination of No Shipments; 2014–2015,* 81 FR 29839 (May 13, 2016) (*Preliminary Results*).

[2] For a complete description of the scope of the order, *see* the memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, "Decision Memorandum for the Preliminary Results of the 2014–2015 Administrative Review of the Antidumping Duty Order on Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation," (Preliminary Decision Memorandum), dated May 5, 2016, which can be accessed directly at *http://enforcement.trade.gov/frn/.*

[3] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[4] *See Assessment Policy Notice* for a full discussion of this clarification.

[5] *See Ammonium Nitrate From the Russian Federation: Final Results of Sunset Review and Revocation of Antidumping Duty Order,* 81 FR 61185 (August 12, 2016).

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 12, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–22387 Filed 9–16–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Smart Grid Solutions Toolkit

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice and request for public comment.

SUMMARY: The U.S. Department of Commerce announces the development of a toolkit to promote the deployment of U.S. smart grid technologies and services to be launched in FY2017. Through this Notice, the Department of Commerce seeks broad input from all interested stakeholders regarding the most frequently requested "use cases" by electric utilities for inclusion in a web-based *U.S. Smart Grid Solutions Toolkit.* The *U.S. Smart Grid Solutions Toolkit* ("Toolkit") is intended to be used by foreign energy officials and foreign end-users of smart grid technologies. The Toolkit will outline U.S. approaches to a series of electric utility use cases and highlight participating U.S. vendors of relevant U.S. smart grid technologies and services. The Toolkit will support the President's National Export Initiative by fostering export opportunities for the U.S. energy industry.

DATES: Written comments must be received on or before 4:00 p.m. Eastern Daylight Time (EDT) on October 1, 2016.

ADDRESSES: Written comments by be submitted by email to *Victoria.Gunderson@trade.gov.* Comments submitted by email should be machine-readable and should not be copy protected. Written comments should include contact information for the submitter including name, email, and phone number. Written comments also may be submitted by mail to Victoria Gunderson, Office of Energy & Environmental Industries, Room 4053, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Victoria Gunderson, Office of Energy & Environmental Industries, Room 4053, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; phone 202–482–7890; fax 202–482–5665; email *Victoria.Gunderson@trade.gov.*

SUPPLEMENTARY INFORMATION: The development of the *U.S. Smart Grid Solutions Toolkit* requires the identification of three elements: (1) The most frequently requested use cases by global electric utilities; (2) a framework logic to outline the structure of the U.S. smart grid industry; and (3) U.S. vendors capable of supplying relevant goods and services to foreign buyers. At this stage of development of the Toolkit, and through this Notice, the Department of Commerce invites comment to identify the most commonly requested "use cases," requested by electric utilities. Smart grid use cases should be limited to those applications that can be addressed by transmission, distribution, and energy storage related technologies and services. Examples of use cases include, but are not limited to, the following: Arbitrage, distribution upgrades due to wind/solar, curtailment minimization, frequency regulation, improved customer engagement, non-technical loss reduction, outage detection, and peak demand reduction.

Because input received will be publicly available upon request, businesses or individuals responding to this notice should not include any business confidential. Final selection of included use cases into the Toolkit will not be attributed.

A subsequent **Federal Register** notice will be issued at a later date for U.S. vendors capable of supplying relevant goods and services to foreign buyers to express interest and provide relevant information to be listed in the Toolkit.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2016–22487 Filed 9–16–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–042]

Stainless Steel Sheet and Strip From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) preliminarily determines that imports of stainless steel sheet and strip (stainless sheet and strip) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2015, through December 31, 2015. The estimated dumping margins are shown in the "Preliminary Determination" section of this notice. We invite interested parties to comment on this preliminary determination.

DATES: Effective September 19, 2016.

FOR FURTHER INFORMATION CONTACT: Toni Page at (202) 482–1398 or Lingjun Wang at (202) 482–2316, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on March 10, 2016.[1] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum dated concurrently with and hereby adopted by this notice.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix I. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized

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[1] *See Stainless Steel Sheet and Strip From the People's Republic of China: Initiation of Less Than Fair Value Investigation,* 81 FR 12711 (March 10, 2016) (*Initiation Notice*).

[2] *See* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China" (Preliminary Decision Memorandum).

Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit located at Room B8024 of the Department's main building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn.* The signed Preliminary Decision Memorandum and electronic version of Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is stainless sheet and strip. For a complete description of the scope of this investigation, *see* Appendix II.

Scope Comments

In accordance with the *Preamble* to the Department's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal response submitted to the record, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Memorandum.[5] The Department is preliminarily not modifying the scope language as it appeared in the *Initiation Notice.*

Postponement of Deadline for the Preliminary Determination

The Department published the notice of postponement of preliminary determination of this investigation on July 7, 2016.[6] Pursuant to sections 733(c)(1)(B)(i) and (ii) of the Tariff Act of 1930, as amended (the Act), we postponed the preliminary determination by 50 days. As a result, the deadline for the preliminary determination of this investigation moved to September 9, 2016.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Furthermore, for purposes of this preliminary LTFV determination, the Department continues to treat the PRC as a non-market economy country within the meaning of section 771(18) of the Act. For a full discussion of the Department's methodology, *see* Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

On May 6, 2015, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206, Petitioners timely filed an allegation that critical circumstances exist with respect to imports of stainless sheet and strip from the PRC. We preliminarily determine that critical circumstances exist for the separate rate companies and the PRC-wide entity. For a full description of the methodology and results of our analysis, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[7] Policy Bulletin 05.1 describes this practice.[8]

Preliminary Determination

The Department preliminarily determines that the following dumping margins exist:

Exporter	Producer	Margin (%)	Cash deposit (%)
Taiyuan Ridetaixing Precision Stainless Steel Incorporated Co., Ltd.	Taiyuan Ridetaixing Precision Stainless Steel Incorporated Co., Ltd.	63.86	63.12
Zhangjiagang Pohang Stainless Steel Co., Ltd	Zhangjiagang Pohang Stainless Steel Co., Ltd	63.86	63.12
PRC-Wide Entity	PRC-Wide Entity	76.64	75.90

As detailed in the Preliminary Decision Memorandum, Shanxi Taigang Stainless Steel Co., Ltd. and Tianjin Taigang Daming Metal Product Co., Ltd., two mandatory respondents in this investigation, did not demonstrate that they were entitled to a separate rate. Accordingly, we consider them to be part of the PRC-wide entity.[9]

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of stainless sheet and strip from the PRC as described in Appendix II, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Section 733(e)(2) of the Act provides that given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of investigation was published. As described above, we preliminarily find that critical circumstances exist for the separate rate companies and the PRC-wide entity. Therefore, in accordance with section 733(e)(2)(A) of the Act, for the separate rate companies and the PRC-wide entity, the suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

We will also instruct CBP, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), to require a cash deposit as follows:[10] (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the rate identified in the table; (2) for all combinations of PRC exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. The cash deposit rates were adjusted by the countervailing duty attributable to export subsidies.[11]

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[3] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[4] *See Initiation Notice.*

[5] *See* Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Scope Decision Memorandum (September 9, 2016) (Preliminary Scope Memorandum).

[6] *See Stainless Steel Sheet and Strip From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation,* 81 FR 44277 (July 7, 2016).

[7] *See Initiation Notice,* 81 FR at 9438–39.

[8] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries," dated April 5, 2005 (Policy Bulletin 05.1), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[9] *See* Preliminary Decision Memorandum.

[10] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

Disclosure and Public Comment

We will disclose the calculations performed to interested parties in this proceeding within five days of the date of announcement of this preliminary determination in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the publication of this preliminary determination in the **Federal Register**.[12] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[13]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14] This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the **Federal Register**.[15] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[16] Electronically-filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established above.[17]

International Trade Commission Notification

In accordance with section 733(f) of the Act, we are notifying the International Trade Commission (ITC) of our preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(I) of the Act and 19 CFR 351.205(c).

Dated: September 9, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Scope of the Investigation
VI. Respondent Selection
VII. Critical Circumstances
  A. Legal Framework
  B. Critical Circumstances Allegation
  C. Analysis
VIII. Discussion of the Methodology
  A. Non-Market Economy Country
  B. Separate Rates
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IX. Adjustment Under Section 777A(F) of the Act
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Appendix II

Scope of the Investigation

The merchandise covered by this investigation is stainless steel sheet and strip, whether in coils or straight lengths. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product with a width that is greater than 9.5 mm and with a thickness of 0.3048 mm and greater but less than 4.75 mm, and that is annealed or otherwise heat treated, and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, annealed, tempered, polished, aluminized, coated, painted, varnished, trimmed, cut, punched, or slit, etc.) provided that it maintains the specific dimensions of sheet and strip set forth above following such processing. The products described include products regardless of shape, and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above: (1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded.

Subject merchandise includes stainless steel sheet and strip that has been further processed in a third country, including but not limited to cold-rolling, annealing, tempering, polishing, aluminizing, coating, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the stainless steel sheet and strip.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and not pickled or otherwise descaled; (2) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); and (3) flat wire (*i.e.*, cold-rolled sections, with a mill edge, rectangular in shape, of a width of not more than 9.5 mm).

The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.13.0081, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.23.0030, 7219.23.0060, 7219.24.0030, 7219.24.0060, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.32.0045, 7219.32.0060, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.33.0045, 7219.33.0070, 7219.33.0080, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.34.0050, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.35.0050, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015,

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[11] *See* Preliminary Decision Memorandum.

[12] *See* 19 CFR 351.309(b)(2)(c)(i).

[13] *See* 19 CFR 351.309, *see also* 19 CFR 351.303 (for general filing requirements).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.310(c).

[16] *See* 19 CFR 351.303(b)(2)(i).

[17] *See* 19 CFR 351.303(b)(1).

7220.20.7060, 7220.20.7080, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[FR Doc. 2016–22397 Filed 9–16–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review and New Shipper Review; Calendar Year 2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) completed the administrative review (AR) and new shipper review (NSR) of the countervailing duty (CVD) order on cut-to-length carbon-quality steel plate (CTL Plate) from the Republic of Korea for the January 1, 2014, through December 31, 2014, period of review (POR). Based on our analysis of the comments received, the Department determined that Dongkuk Steel Mill Co., Ltd. (DSM), the firm examined in the AR, and Hyundai Steel Company Ltd. (Hyundai Steel), the firm examined in the NSR, each received a *de minimis* net subsidy rate during the POR. The final net subsidy rates are listed below in the "Final Results of Review" section.

DATES: Effective September 19, 2016.

FOR FURTHER INFORMATION CONTACT: John Conniff at 202–482–1009 (for Hyundai Steel), or Jolanta Lawska at 202–482–8362 (for DSM), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2000, the Department published in the **Federal Register** the *CTL Plate Order*.[1] On March 14, 2016, the Department published its preliminary results of AR and NSR of the CVD order on CTL Plate from the Republic of Korea for the POR.[2] For a discussion of the events following the Preliminary Results, see the Preliminary Decision Memorandum.

Scope of the Order

The products covered by the order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.[3]

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For the subsidy program found countervailable during the POR, we determine that there is a subsidy, *i.e.*, a government-provided financial contribution that confers a benefit to the recipient, and that the subsidy is specific. *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity. For a complete description of the methodology, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' case briefs, submitted in this proceeding, are addressed in the Issues and Decision Memorandum. A list of the issues raised by interested parties and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*, and is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for DSM, the firm subject to the AR and Hyundai Steel, the firm subject to the NSR. For the period January 1, 2014, through December 31, 2014, we determine the total net countervailable subsidy rates for DSM and Hyundai are as follows:

Company	2014 *Ad Valorem* rate
Dongkuk Steel Mill Co., Ltd	0.01 percent *ad valorem* (*de minimis*).

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[1] *See Notice of Amended Final Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000) (*CTL Plate Order*).

[2] *See Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review and New Shipper Review; Calendar Year 2014*, 81 FR 13330 (March 14, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[3] For a complete description of the scope of the order, *see* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Final Results of 2014 Countervailing Duty Administrative Review and New Shipper Review: Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea," (Issues and Decision Memorandum), dated concurrently and hereby adopted by this notice.

Company	2014 *Ad Valorem* rate
Hyundai Steel Company Ltd	0.23 percent *ad valorem* (*de minimis*).

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for these final results within five days of the date of the publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

In accordance with 19 CFR 351.212(b)(2), the Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results to liquidate shipments of subject merchandise produced by DSM and Hyundai Steel entered, or withdrawn form warehouse, for consumption on or after January 1, 2014, through December 31, 2014, without regard to CVDs because a *de minimis* subsidy rate was calculated for each company.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of zero percent on shipments of the subject merchandise produced and/or exported by DSM and Hyundai Steel entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Return or Destruction of Proprietary Information

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 12, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

I. Summary
II. Period of Review
III. Scope of the Order
IV. Attribution of Subsidies
V. *Bona Fides* Analysis
VI. Analysis of Programs
VII. Analysis of Comments
  Comment 1: Whether the Department Should Initiate an Investigation into the GOK's Provision of Electricity for less than adequate remuneration (LTAR)
  Comment 2: Whether the Department Improperly Countervailed Acquisition Tax Exemptions Received By Hyundai Steel under the Restrictions of Special Taxation Act (RSTA) Article 120 in Connection with its Acquisition of HYSCO's Cold-Rolled Assets
  Comment 3: Whether the Department Improperly Countervailed Property Tax Exemptions Received by the Pohang Plant under the Restriction of Special Location Taxation Act (RSLTA)
  Comment 4: Whether the Department Should Initiate an Investigation into the GOK's Provision of Electricity for More than Adequate Remuneration (MTAR)
VIII. Recommendation

[FR Doc. 2016–22403 Filed 9–16–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Multistakeholder Process on Internet of Things Security Upgradability and Patching

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will convene meetings of a multistakeholder process concerning Internet of Things Security Upgradability and Patching. This Notice announces the first meeting, which is scheduled for October 19, 2016.

DATES: The meeting will be held on October 19, 2016, from 10:00 a.m. to 4:00 p.m., Central Daylight Time.

ADDRESSES: The meeting will be held in the Trinity Ballroom at the Renaissance Austin Hotel, 9721 Arboretum Boulevard, Austin, Texas 78759.

FOR FURTHER INFORMATION CONTACT: Allan Friedman, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; telephone: (202) 482–4281; email: *afriedman@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs: (202) 482–7002; email: *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background: In March of 2015 the National Telecommunications and Information Administration issued a Request for Comment to "identify substantive cybersecurity issues that affect the digital ecosystem and digital economic growth where broad consensus, coordinated action, and the development of best practices could substantially improve security for organizations and consumers." [1] We received comments from a range of stakeholders, including trade associations, large companies, cybersecurity startups, civil society organizations and independent computer security experts.[2] The comments recommended a diverse set of issues that might be addressed through the multistakeholder process, including cybersecurity policy and practice in the emerging area of Internet of Things (IoT).

In a separate but related matter in April 2016, NTIA, the Department's Internet Policy Task Force, and its Digital Economy Leadership Team sought comments on the benefits, challenges, and potential roles for the government in fostering the advancement of the Internet of Things." [3] Over 130 stakeholders responded with comments addressing many substantive issues and opportunities related to IoT.[4] Security was one of the most common topics raised.

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[1] U.S. Department of Commerce, Internet Policy Task Force, Request for Public Comment, Stakeholder Engagement on Cybersecurity in the Digital Ecosystem, 80 FR 14360, Docket No. 150312253–5253–01 (Mar. 19, 2015), *available at: https://www.ntia.doc.gov/files/ntia/publications/cybersecurity_rfc_03192015.pdf.*

[2] NTIA has posted the public comments received at *https://www.ntia.doc.gov/federal-register-notice/2015/comments-stakeholder-engagement-cybersecurity-digital-ecosystem.*

[3] U.S. Department of Commerce, Internet Policy Task Force, Request for Public Comment, Benefits, Challenges, and Potential Roles for the Government in Fostering the Advancement of the Internet of Things, 81 FR 19956, Docket No. 160331306–6306–01 (April 5, 2016), *available at: https://www.ntia.doc.gov/federal-register-notice/2016/rfc-potential-roles-government-fostering-advancement-internet-of-things.*

Many commenters emphasized the need for a secure lifecycle approach to IoT devices that considers the development, maintenance, and end-of-life phases and decisions for a device. On August 2, 2016, after reviewing these comments, NTIA announced that the next multistakeholder process on cybersecurity would be on IoT security upgradability and patching.[5]

The matter of patching vulnerable systems is now an accepted part of cybersecurity.[6] Unaddressed technical flaws in systems leave the users of software and systems at risk. The nature of these risks varies, and mitigating these risks requires various efforts from the developers and owners of these systems. One of the more common means of mitigation is for the developer or other maintaining party to issue a security patch to address the vulnerability. Patching has become more commonly accepted, even for consumers, as more operating systems and applications shift to visible reminders and automated updates. Yet as one security expert notes, this evolution of the software industry has yet to become the dominant model in IoT.[7]

To help realize the full innovative potential of IoT, users need reasonable assurance that connected devices, embedded systems, and their applications will be secure. A key part of that security is the mitigation of potential security vulnerabilities in IoT devices or applications through patching and security upgrades.

The ultimate objective of the multistakeholder process is to foster a market offering more devices and systems that support security upgrades through increased consumer awareness and understanding. Enabling a thriving market for patchable IoT requires common definitions so that manufacturers and solution providers have shared visions for security, and consumers know what they are purchasing. Currently, no such common, widely accepted definitions exist, so many manufacturers struggle to effectively communicate to consumers the security features of their devices. This is detrimental to the digital ecosystem as a whole, as it does not reward companies that invest in patching and it prevents consumers from making informed purchasing choices.

The immediate goal of this process will be to develop a broad, shared definition or set of definitions around security upgradability for consumer IoT, as well as strategies for communicating the security features of IoT devices to consumers. One initial step will be to explore and map out the many dimensions of security upgradability and patching for the relevant systems and applications. A goal will be to design and explore definitions that are easily understandable, while being backed by technical specifications and organizational practices and processes. A final step will be to develop a strategy to share these definitions throughout the broader development community, and ultimately with consumers. This may include raising awareness in the consumer space to help consumers understand security options and drive market forces.

Stakeholders will determine the shape of the conversation and the process. NTIA has announced that the scope of the discussion will be around consumer devices, but stakeholders will ultimately determine which technologies, sectors, and applications will be discussed in the process, and covered by the resulting definitions and framework.

While we anticipate a technical discussion in the process of exploring security upgrades, NTIA does not expect this discussion to develop new technical standards. This multistakeholder process is not a formal standards development process. Stakeholders may wish to use existing standards in their discussion and definitions, or may wish to call for new standards or standards processes as part of their recommendations.

Stakeholders will determine the exact nature of the outcome of this process. Because it is unlikely that a one-size-fits-all solution will be feasible in this dynamic space, stakeholders will need to determine how to scope and organize the work through sub-groups or other means. Success of the process will be evaluated by the extent to which stakeholders embrace and implement the consensus findings within their individual practices or organizations, and work to promulgate them throughout the community. Although the stakeholders determine the outcome of the process, it is important to note that the process will not result in a new law or regulation.

Matters to Be Considered: The October 19, 2016, meeting will be the first in a series of NTIA-convened multistakeholder discussions concerning IoT security upgradability and patching. Subsequent meetings will follow on a schedule determined by those participating in the first meeting. Stakeholders will engage in an open, transparent, consensus-driven process to understand the range of issues in security upgradability, and develop a set of definitions useful to both industry and consumers. The multistakeholder process will involve hearing and understanding the perspectives of diverse stakeholders, including a range of IoT manufacturers, solution providers, security experts, and consumer advocates.

The October 19, 2016, meeting is intended to bring stakeholders together to share the range of views on security upgradability and patching, and to establish more concrete goals and structure of the process. The objectives of this first meeting are to: (1) Briefly review the importance of patching and the challenges in the existing ecosystem; (2) briefly share different perspectives on existing technologies and practices; (3) engage stakeholders in a discussion of key security upgrade dimensions, features, and concerns; (4) engage stakeholders in a discussion of logistical issues, including internal structures such as a small drafting committee or various working groups, and the location and frequency of future meetings; and (5) identify concrete goals and stakeholder work following the first meeting.

The main objective of further meetings will be to encourage and facilitate continued discussion among stakeholders to build out a mapping of the range of issues, and develop a consensus view of a consolidated set of potential definitions. Discussions will also cover best practices for sharing security information with consumers. This discussion may include circulation of stakeholder-developed strawman drafts and discussion of the appropriate scope of the initiative. Stakeholders may also agree on procedural work plans for the group, including additional meetings or modified logistics for future meetings. NTIA suggests that stakeholders consider setting clear deadlines for a working draft and a phase for external review of this draft, before reconvening to take account of external feedback.

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[4] NTIA has posted the public comments received at *https://www.ntia.doc.gov/federal-register-notice/2016/comments-potential-roles-government-fostering-advancement-internet-of-things.*

[5] NTIA, *Increasing the Potential of IoT through Security and Transparency* (Aug. 2, 2016), *available at: https://www.ntia.doc.gov/blog/2016/increasing-potential-iot-through-security-and-transparency.*

[6] *See, e.g.* Murugiah Souppaya and Karen Scarfone, *Guide to Enterprise Patch Management Technologies, Special Publication 800–40 Revision 3,* National Institute of Standards and Technology, NIST SP 800–40 (2013) *available at: http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-40r3.pdf.*

[7] Bruce Schneier, *The Internet of Things Is Wildly Insecure—And Often Unpatchable,* Wired (Jan. 6, 2014) *available at: https://www.schneier.com/blog/archives/2014/01/security_risks_9.html.*

More information about stakeholders' work will be available at: *https://www.ntia.doc.gov/other-publication/2016/multistakeholder-process-iot-security.*

Time and Date: NTIA will convene the first meeting of the multistakeholder process on IoT Security Upgradability and Patching on October 19, 2016, from 10:00 a.m. to 4:00 p.m., Central Daylight Time. Please refer to NTIA's Web site, *https://www.ntia.doc.gov/other-publication/2016/multistakeholder-process-iot-security,* for the most current information.

Place: The meeting will be held in the Trinity Ballroom at the Renaissance Austin Hotel, 9721 Arboretum Boulevard, Austin, Texas 78759. The location of the meeting is subject to change. Please refer to NTIA's Web site, *https://www.ntia.doc.gov/other-publication/2016/multistakeholder-process-iot-security,* for the most current information.

Other Information: The meeting is open to the public and the press on a first-come, first-served basis. Space is limited. To assist the agency in determining space and webcast technology requirements, NTIA requests that interested persons pre-register for the meeting at *https://www.ntia.doc.gov/other-publication/2016/multistakeholder-process-iot-security.*

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Allan Friedman at (202) 482–4281 or *afriedman@ntia.doc.gov* at least seven (7) business days prior to each meeting. The meetings will also be webcast. Requests for real-time captioning of the webcast or other auxiliary aids should be directed to Allan Friedman at (202) 482–4281 or *afriedman@ntia.doc.gov* at least seven (7) business days prior to each meeting. There will be an opportunity for stakeholders viewing the webcast to participate remotely in the meetings through a moderated conference bridge, including polling functionality. Access details for the meetings are subject to change. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/other-publication/2016/multistakeholder-process-iot-security,* for the most current information.

Dated: September 14, 2016.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2016–22459 Filed 9–16–16; 8:45 am]

BILLING CODE 3510–60–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 ("PRA"), this notice announces that the Information Collection Request ("ICR") abstracted below has been forwarded to the Office of Management and Budget ("OMB") for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before October 19, 2016.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs ("OIRA") in OMB, within 30 days of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0102. Please provide the Commodity Futures Trading Commission ("CFTC" or "Commission") with a copy of all submitted comments at the address listed below. Please refer to OMB Control No. 3038–0102, found on *http://reginfo.gov.*

Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, or submitted through the Commission's Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 or by Hand Delivery/Courier at the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *http://reginfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa D'Arcy, Special Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; (202) 418–5086; email: *mdarcy@cftc.gov,* and refer to OMB Control No. 3038–0102.

SUPPLEMENTARY INFORMATION:

Title: "Clearing Exemption for Certain Swaps Entered into by Cooperatives," (OMB Control No. 3038–0102). This is a request for extension of a currently approved information collection.

Abstract: Section 2(h)(1)(A) of the Commodity Exchange Act requires certain entities to submit for clearing certain swaps if they are required to be cleared by the Commission. Commission regulation 50.51 permits certain cooperatives to elect not to clear certain swaps that otherwise would be required to be cleared, provided that they meet certain conditions. The rule further requires the reporting of certain information if the exemption for cooperatives is elected. This collection pertains to information the Commission needs to monitor use of the cooperative exemption and assess market risk in connection therewith. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents and respondent burden. The respondent burden for this collection is estimated to be as follows:

Respondents/Affected Entities: Parties electing the cooperative exemption under Commission regulation 50.51.

Estimated Number of Respondents: 25.

Estimated Average Burden Hours per Respondent: 1 hour.

Estimated Total Annual Burden Hours on Respondents: 25 hours.

Frequency of Collection: Annually; on occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: September 14, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–22481 Filed 9–16–16; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Notice of Availability of Revised Methodology for Determining Average Prime Offer Rates

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of availability.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) announces the availability of a revised methodology statement, entitled the "Methodology for Determining Average Prime Offer Rates." The methodology statement describes the methodology used to calculate average prime offer rates for purposes of Regulation C and Regulation Z. The Bureau removed from the methodology statement the references to the sources of survey data used to calculate average prime offer rates.

ADDRESSES: The revised methodology statement is available on the Web site of the Federal Financial Institutions Examination Council (FFIEC) at *https://www.ffiec.gov/ratespread/newcalchelp.aspx#4.*

FOR FURTHER INFORMATION CONTACT: Terry J. Randall, Counsel, Office of Regulations, at 202–435–7700.

SUPPLEMENTARY INFORMATION: The average prime offer rates (APORs) are annual percentage rates derived from average interest rates, points, and other loan pricing terms offered to borrowers by a representative sample of lenders for mortgage loans that have low-risk pricing characteristics. APORs have implications for data reporters under Regulation C and creditors under Regulation Z. Regulation C requires covered financial institutions to report, for certain transactions, the difference between a loan's annual percentage rate (APR) and the APOR for a comparable transaction.[1] Under Regulation Z, a creditor may be subject to certain special provisions if the difference between a loan's APR and the APOR for a comparable transaction exceeds certain thresholds.[2]

The Bureau calculates APORs on a weekly basis according to a methodology statement that is available to the public and posts the APORs.[3] To calculate APORs, survey data on four mortgage products are used and posted on the FFIEC Web site weekly: 30-year fixed rate mortgage, 15-year fixed rate mortgage, five-year variable rate mortgage, and one-year variable rate mortgage.[4] Currently, both the methodology statement and the FFIEC Web page that lists the survey data used to calculate APORs identify the sources of the survey data used to calculate APORs.

The Freddie Mac Primary Mortgage Market Survey® (PMMS) previously provided survey data for all four of the mortgage products that were used to calculate the weekly APORs. Earlier this year, Freddie Mac discontinued publishing the result for the one-year variable rate mortgage product. However, it provided the Bureau with data on the one-year variable rate mortgage product obtained using the same survey and calculation techniques as the PMMS. Beginning on July 7, 2016, the Bureau started using data provided by a survey conducted by HSH Associates (HSH) for the one-year variable rate mortgage product together with PMMS data on 30-year fixed rate mortgage, 15-year fixed rate mortgage, and five-year variable rate mortgage products to calculate the weekly APORs. The Bureau updated both the methodology statement[5] and the FFIEC Web site to note the change in the source of survey data for the one-year variable rate mortgage product and continued to post the survey data used to calculate APORs on the FFIEC Web site on a weekly basis.[6] The Bureau has learned that, this month, HSH will discontinue collecting mortgage survey data, including data on the one-year variable rate mortgage product. The Bureau has identified a replacement source of survey data on the one-year variable rate product: Data obtained from Freddie Mac using the same survey and calculation techniques as PMMS, although the official PMMS no longer publishes results for the one-year variable rate mortgage product. The Bureau will use these data to calculate APORs beginning on September 22, 2016.

The Bureau will continue to post the survey data used to calculate APORs on the FFIEC Web site every week at *https://www.ffiec.gov/ratespread/mortgagerates.htm* and will continue to identify the source of the survey data on that Web page. However, to streamline how the Bureau provides notice of the sources of survey data, the Bureau will no longer revise the methodology statement each time it is necessary to change the source of survey data. Accordingly, the Bureau revised the methodology statement to remove the references to the sources of survey data. In addition to this change to the methodology statement, the Bureau corrected the methodology statement to clarify that the survey data reflect only points and do not include fees. There are no other substantive changes to the methodology statement.

Dated: September 13, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–22504 Filed 9–16–16; 8:45 am]

BILLING CODE 4810–AM–P

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[1] 12 CFR 1003.4(a)(12)(i).

[2] 12 CFR 1026.35(a) and 1026.32(a)(1)(i).

[3] *See* FFIEC, Average Prime Offer Rate Tables, *available at https://www.ffiec.gov/ratespread/aportables.htm.*

[4] *See* FFIEC, Mortgage Rate Survey Data Used to Calculate Rate Spreads for Loans Reportable under HMDA, *available at https://www.ffiec.gov/ratespread/mortgagerates.htm.*

[5] Notice of Availability of Revised Methodology for Determining Average Prime Offer Rates, 81 FR 52831 (Aug. 10, 2016).

[6] *See* FFIEC, Mortgage Rate Survey Data Used to Calculate Rate Spreads for Loans Reportable under HMDA, *available at https://www.ffiec.gov/ratespread/mortgagerates.htm.*

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act; Notice of Meeting

TIME AND DATE: Thursday September 22, 2016, 9:30 a.m.–11:30 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTER TO BE CONSIDERED:

Briefing Matter: Fiscal Year 2017 Operating Plan.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live.*

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 15, 2016.

Todd A. Stevenson,

Secretariat.

[FR Doc. 2016–22653 Filed 9–15–16; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[OMB Control Number 0704–0477; Docket Number DARS–2016–0037]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Organizational Conflicts of Interest in Major Defense Acquisition Programs

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed revision of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed revision of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through March 31, 2017. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by November 18, 2016.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0477, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: osd.dfars@mail.mil. Include OMB Control Number 0704–0477 in the subject line of the message.

Fax: 571–372–6094.

Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, at 571–372–6106. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.* Paper copies are available from Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 209.5, Organizational and Consultant Conflicts of Interest, and related provision at DFARS 252.209–7008, Notice of Prohibition Relating to Organizational Conflict of Interest-Major Defense Acquisition Program; OMB Control Number 0704–0477.

Needs and Uses: This information collection requires an offeror to submit a mitigation plan if requesting an exemption from the statutory limitation on future contracting. This information will be used to resolve organizational conflicts of interest arising in a systems engineering and technical assistance contract for an MDAP, as required by section 207 of Weapon Systems Acquisition Reform Act of 2009 (WSARA).

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Number of Respondents: 22.

Responses per Respondent: 3.

Annual Responses: 67.

Average Burden per Response: 40 hours.

Annual Burden Hours: 2,680.

Reporting Frequency: On occasion.

Summary of Information Collection

This information collection includes requirements relating to DFARS subpart 209.5, Organizational and Consultant Conflicts of Interest, and the related provision at DFARS 252.209–7008, Notice of Prohibition Relegating to Organizational Conflict of Interest—Major Defense Acquisition Program. DFARS subpart 209.5 implements section 207 of the Weapons system Acquisition Reform Act of 2009 (Pub. L. 111–23). The provision at DFARS 252.209–7008, paragraph (d), requires an offeror to submit a mitigation plan if requesting an exemption from the statutory limitation on future contracting.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2016–22492 Filed 9–16–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group; Notice of Federal Advisory Committee Closed Meeting

AGENCY: Department of Defense.

ACTION: Notice of Federal Advisory Committee closed meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the U.S. Strategic Command Strategic Advisory Group. This meeting will be closed to the public.

DATES: Wednesday, October 5, 2016, from 8:00 a.m. to 4:00 p.m. and Thursday, October 6, 2016, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Trefz, Jr., Designated Federal Officer, (402) 294–4102, 901 SAC Boulevard, Suite 1F7, Offutt AFB, NE 68113–6030.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. App 2, Section 1), the Government in Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda: Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, Admiral C.D. Haney, Commander, U.S. Strategic

Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.* Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: September 13, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–22429 Filed 9–16–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2015–OS–0058]

Proposed Collection; Comment Request

AGENCY: Office of Economic Adjustment, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of Economic Adjustment announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 18, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of Economic Adjustment, Compliance and Integration, ATTN: Nia Hope, 2231 Crystal Drive, Suite 520, Arlington, VA 22202 at 703–697–2088.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application Information Public Schools on Military Installations; SF 424; OMB Control Number 0790–0006.

Needs and Uses: The information collection requirement is necessary to determine applicant and project compliance with legal and programmatic requirements of the program and will help the Federal Evaluation Team, in cooperation with the eligible invited Local Education Authorities, to establish an agreed upon project scope and budget to be considered for funding.

Affected Public: State, Local, or Tribal Government.

Annual Burden Hours: 264.

Number of Respondents: 12.

Responses per Respondent: 1.

Annual Responses: 12.

Average Burden per Response: 22 hours.

Frequency: Annually.

Dated: September 13, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–22428 Filed 9–16–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0084]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Aid Internet Gateway (SAIG) Enrollment Document

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 19, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0084. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Aid Internet Gateway (SAIG) Enrollment Document.

OMB Control Number: 1845–0002.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 65,071.

Total Estimated Number of Annual Burden Hours: 14,720.

Abstract: Enrollment in the Federal Student Aid (FSA) Student Aid Internet Gateway (SAIG) allows eligible entities to securely exchange Title IV, Higher Education Act (HEA) assistance programs data electronically with the Department of Education processors. Organizations establish Destination Point Administrators (DPAs) to transmit, receive, view and update student financial aid records using telecommunication software. Eligible respondents include, but are not limited to, the following institutions of higher education that participate in Title IV, HEA assistance programs, third-party servicers of eligible institutions, Guaranty Agencies, Federal Family Education Loan Program (FFELP) lenders, Federal Loan Servicers, and local educational agencies (LEAs). The Enrollment Form for Post-Secondary Schools and Servicers represents the full complement of questions that must be presented for an organization enrolling in SAIG. The Enrollment Form for State Grant Agencies is a subset of selected questions (from the full complement of questions) to streamline the form for ease of use. This request represents the full 3 year review.

Dated: September 14, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–22468 Filed 9–16–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0078]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Educational Opportunity Centers Program (EOC) Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before October 19, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0078. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Rachael Couch, 202–453–6078.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Educational Opportunity Centers Program (EOC) Annual Performance Report.

OMB Control Number: 1840–0830.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 126.

Total Estimated Number of Annual Burden Hours: 1,008.

Abstract: The purposes of the EOC Program are to: Provide information regarding financial and academic assistance available for qualified adults who want to enter or continue to pursue a program of postsecondary education; provide assistance to those individuals in applying for admission to institutions at which a program of postsecondary education is offered, including preparing necessary applications for use by admissions and financial aid officers; and assist in improving the financial and economic literacy of program participants.

An Educational Opportunity Centers project may provide the following services:

(1) Public information campaigns designed to inform the community regarding opportunities for postsecondary education and training;

(2) Academic advice and assistance in course selection;

(3) Assistance in completing college admission and financial aid applications;

(4) Assistance in preparing for college entrance examinations;

(5) Education or counseling services designed to improve the financial literacy and economic literacy of students;

(6) Guidance on secondary school reentry or entry to a general educational development (GED) program or other alternative education program for secondary school dropouts;

(7) Individualized personal, career, and academic counseling;

(8) Tutorial services;

(9) Career workshops and counseling;

(10) Mentoring programs involving elementary or secondary school teachers, faculty members at institutions of higher education (IHEs), students, or any combination of these persons; and

(11) Programs and activities as described in items (1) through (10) that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths, students who are in foster care or are aging out of the foster care system, or other disconnected students.

(12) Other activities designed to meet the purposes of the EOC Program.

Dated: September 14, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–22490 Filed 9–16–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0102]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Program for International Student Assessment (PISA 2018) Recruitment and Field Test

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 19, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0102. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Program for International Student Assessment (PISA 2018) Recruitment and Field Test.

OMB Control Number: 1850–0755.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 14,392.

Total Estimated Number of Annual Burden Hours: 8,775.

Abstract: We are announcing a second 30-day comment period for the Program for International Student Assessments (PISA) 2017 Field Test to include additional survey items in the field test questionnaires, as recently stipulated by the Organization for Economic Cooperation and Development (OECD).

The Program for International Student Assessments (PISA) is an international assessment of 15-year-olds which focuses on assessing students' reading, mathematics, and science literacy. PISA was first administered in 2000 and is conducted every three years. The United States has participated in all of the previous cycles, and will participate in 2018 in order to track trends and to compare the performance of U.S. students with that of students in other education systems. PISA 2018 is sponsored by the Organization for Economic Cooperation and Development (OECD). In the United States, PISA is conducted by the National Center for Education Statistics (NCES), within the U.S. Department of Education. In each administration of PISA, one of the subject areas (reading, mathematics, or science literacy) is the major domain and has the broadest content coverage, while the other two subjects are the minor domains. PISA emphasizes functional skills that students have acquired as they near the end of mandatory schooling (aged 15 years), and students' knowledge and skills gained both in and out of school environments. PISA 2018 will focus on reading literacy as the major domain. Mathematics and science literacy will also be assessed as minor domains, with additional assessments of global competence and financial literacy. In addition to the cognitive assessments described above, PISA 2018 will include questionnaires administered to assessed students, school principals, and teachers. To prepare for the main study in 2018, NCES will conduct a PISA field test from April–May 2017 to evaluate newly developed assessment and questionnaire items, to test the assessment operations, and to test school recruitment, data collection, and data management procedures. The PISA main study will be conducted in the U.S. from September–November 2018. This submission requests approval for: Recruitment and pre-assessment activities for the 2017 field test sample; administration of the field test; and recruitment of schools for the 2018 main study sample.

Dated: September 14, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–22443 Filed 9–16–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of approval for Fiscal Year 2017 base charge and rates.

SUMMARY: In this notice, the Western Area Power Administration (WAPA) establishes the Fiscal Year (FY) 2017 base charge and rates for Boulder Canyon Project (BCP) electric service, as approved by the Deputy Secretary of Energy (Deputy Secretary). The base charge will provide sufficient revenue to cover all annual costs, including interest expense, and to repay investments within the allowable period.

DATES: The base charge and rates will be effective the first day of the first full billing period beginning on or after October 1, 2016, and will remain in effect through September 30, 2017, or until superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald E. Moulton, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2453, email *rmoulton@wapa.gov,* or Mr. Scott Lund, Rates Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, email *slund@wapa.gov.*

SUPPLEMENTARY INFORMATION: Hoover Dam, authorized by the Boulder Canyon Project Act (45 Stat. 1057, December 21, 1928), sits on the Colorado River along the Arizona and Nevada border. The Hoover Dam power plant has 19 generating units (two for plant use) and an installed capacity of 2,078,800 kilowatts (kW) (4,800 kW for plant use). High-voltage transmission lines and substations connect BCP power to consumers in southern Nevada, Arizona, and southern California. Electric service rates are adjusted annually using an existing rate formula established on April 19, 1996. The rate formula requires BCP power customers to pay a base charge (expressed in dollars), rather than a rate, for their power. The base charge is calculated to generate sufficient revenue to cover all annual costs, including interest expense, and to repay investments within allowable time periods. The base charge is allocated to each BCP power customer in proportion to its allocation of Hoover power. The composite power rate, expressed in mills per kilowatt-hour (mills/kWh), is calculated by dividing the base charge by energy sales in a year. However, it is the base charge and not the power rate that is used to calculate BCP customers' bills.

Rate Schedule BCP–F9 under Rate Order No. WAPA–171 was approved on an interim basis by the Deputy Secretary for a five-year period beginning October 1, 2015, and ending September 30, 2020.[1] This rate schedule, which was approved by the Federal Energy Regulatory Commission (FERC) on a final basis on December 11, 2015, requires the base charge be calculated annually based on current financial and hydrological data.[2] This notice sets forth the calculation for the FY 2017 BCP base charge.

The FY 2017 base charge for BCP electric service is $69,662,289, a 9.3 percent increase from the FY 2016 base charge of $63,735,856. The primary factors contributing to the change in the base charge are prior year carryover and total expenses. Prior year carryover, the difference between the previous year's base charge and expense, has decreased by $9 million, or 62.7 percent. Prior year carryover offset current year expenses, thereby reducing the base charge. In FY 2014, carryover increased significantly when customers repaid certain capitalized investments. Since that time carryover has steadily decreased, contributing to the increase in the FY 2017 base charge. Total expenses, which include operation, maintenance and replacement costs, increased by $6 million, or 9.2 percent, while other expenses such as the uprating credit program and Hoover Dam Visitor Center costs decreased by $10 million, or 37 percent. Despite the overall expense decrease of $4 million, the FY 2017 base charge is increasing due to the reduction of prior year carryover.

The FY 2017 composite rate of 19.63 mills/kWh increased 7.11 percent compared to the FY 2016 composite rate of 18.33 mills/kWh. The FY 2017 energy rate of 9.82 mills/kWh increased 7.11 percent compared to the FY 2016 energy rate of 9.17 mills/kWh. The FY 2017 capacity rate of $1.89/kW-month increased 9.8 percent compared to the FY 2016 capacity rate of $1.72/kW-month. Energy sales are forecast to increase 2 percent from FY 2016 while FY 2017 capacity sales are expected to decrease 0.5 percent due to poor hydrological conditions. The increase in the FY 2017 base charge is the primary driver behind the increases in the composite, energy and capacity rates. The base charge and rates were calculated using WAPA's FY 2016 Final Master Schedule which provides FY 2017 energy and capacity sales projections.

The following summarizes the steps taken by WAPA to ensure involvement of all interested parties in determining the base charge and rates:

1. A **Federal Register** notice was published on April 4, 2016 (81 FR 19169), announcing the proposed rate adjustment process, initiating a public consultation and comment period, announcing public information and public comment forums, and presenting procedures for public participation.

2. Discussion of the proposal occurred at two informal BCP Contractor meetings held April 5, 2016, in Phoenix, Arizona and April 12, 2016, via web conference. Representatives from WAPA and the Bureau of Reclamation (Reclamation) explained the basis for the estimates used to calculate the base charge and rates and held a question and answer session.

3. At the public information forum held on April 27, 2016, in Phoenix, Arizona, WAPA and Reclamation representatives explained the proposed base charge and rates for FY 2017 and held a question and answer session at these informal meetings.

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[1] 80 FR 44098 (July 24, 2015).

[2] Docket No. EF15–7–000 (153 FERC ¶ 62,189).

4. A public comment forum held on May 25, 2016, in Phoenix, Arizona, provided the public with an opportunity to comment for the record.

5. WAPA received several comments during the 90-day consultation and comment period ending July 5, 2016. Comments and responses, paraphrased for brevity when not affecting the meaning of the statement, are presented below.

Comment: Commenters objected to the expense WAPA incurred to negotiate electric service contracts for the Post-2017 marketing period.

Response: Department of Energy Order RA 6120.2 requires the recovery of all costs of operating and maintaining a power system. It was necessary and appropriate to incur costs associated with negotiating the Post-2017 electric service contracts and implementation agreement. During the negotiations, WAPA remained mindful of costs incurred and was prudent in managing travel and related expenses.

Comment: A commenter questioned why the FY 2017 base charge has cost increases for power marketing when the negotiations for the Post-2017 electric service contracts have concluded.

Response: The commenter is correct in pointing out that negotiations on the Post-2017 electric service contracts concluded in 2016. The increase in power marketing costs in the FY 2017 base charge is necessary to implement and support the 31 additional electric service contracts that will be in effect during the Post-2017 marketing period.

Comment: A commenter expressed concern regarding changes to WAPA's General Western Allocation, which is a component of the Facility Expenses cost category.

Response: WAPA provided a detailed explanation of cost allocation changes that affect the General Western Allocation during a customer meeting held on August 23, 2016. WAPA will continue to provide customers with detailed explanations of changes in BCP costs.

Comment: A commenter encouraged Reclamation and WAPA to separately account for Post-Retirement Benefit (PRB) expenses collected during each marketing period in the event a refund is given for those expenses.

Response: Reclamation and WAPA are able to identify the PRB expenses collected in each marketing period, inclusive of any refunds.

Comment: A commenter asked for an update on a customer audit of the BCP and whether the audit will impact the FY 2017 base charge.

Response: The BCP contractors designated an audit selection committee to oversee the selection process of a new audit firm. Southern California Public Power Authority plans to administer the contract. This audit will not affect the FY 2017 base charge and rates as any findings will not be identified until after the FY 2017 base charge and rates are in effect.

Comment: A commenter requested that detailed presentations be made when the FY 2018 base charge is proposed so new contractors can better understand the proposal.

Response: WAPA will increase the level of detail presented in future presentations and supporting documentation and work with new contractors to assist them in understanding the proposed base charge.

Comment: A commenter requested the current Ten Year Operating Plan and supporting documentation for the FY 2017 base charge.

Response: Reclamation has sent new and existing contractors the latest Ten Year Operating Plan. Supporting documentation for the base charge is available on WAPA's Web site at *https://www.wapa.gov/regions/DSW/Rates/Pages/boulder-canyon-rates.aspx.*

Electric Service Rates

The base charge and the resulting calculated rates for electric service are designed to recover expenses including operation and maintenance, payments to states, visitor services, the uprating program, replacements, investment repayment, and accumulated interest. WAPA's power repayment study (PRS) allocates the base charge for electric service equally between capacity and energy.

Availability of Information

Information about this base charge and rate adjustment, including the PRS, comments, letters, memorandums, and other supporting material developed or maintained by WAPA and used to develop the FY 2017 base charge and rates is available for public review at the Desert Southwest Region, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, AZ 85009. The information is also available on WAPA's Web site at *https://www.wapa.gov/regions/DSW/Rates/Pages/boulder-canyon-rates.aspx.*

Ratemaking Procedure Requirements

BCP electric service rates are developed under the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved, were transferred to and vested in the Secretary of Energy, acting by and through WAPA.

By Delegation Order No. 00–037.00A, effective October 25, 2013, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of WAPA; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the FERC. Existing Department of Energy procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 37835). Department of Energy procedures were followed by WAPA in developing the rate formula approved by FERC on December 11, 2015.[3]

The Boulder Canyon Project Implementation Agreement (BCPIA) requires that WAPA determine the annual base charge and rates for the next fiscal year before October 1 of each rate year. The rates for the first rate year, and each fifth rate year thereafter, become effective provisionally upon approval by the Deputy Secretary subject to final approval by FERC. For all other rate years, as is the case for FY 2017, the rates become effective on a final basis upon approval by the Deputy Secretary.

In accordance with 10 CFR part 904, effective June 1, 1987, and the BCPIA, the rates are reviewed annually and adjusted to assure sufficient revenues are collected to achieve payment of all costs and financial obligations associated with the project. Each fiscal year, WAPA prepares a PRS for the BCP to update actual revenues and expenses, including interest, estimates of future revenues, operating expenses, and capitalized costs.

Consistent with procedures set forth in 10 CFR parts 903 and 904 and 18 CFR part 300, WAPA held a consultation and comment period. The notice of the proposed FY 2017 base charge and rates for electric service was published in the **Federal Register** on April 4, 2016 (81 FR 19169).

Under Delegation Order Nos. 00–037.00A and 00–001.00F and in compliance with 10 CFR parts 903 and 904, I hereby approve the FY 2017 base charge and rates for BCP electric service on a final basis under Rate Schedule BCP–F9 through September 30, 2017.

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[3] Docket No. EF15–7–000 (153 FERC ¶ 62,189).

Dated: September 12, 2016.

Elizabeth Sherwood-Randall,

Deputy Secretary of Energy.

[FR Doc. 2016–22465 Filed 9–16–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0794; FRL–9947–88]

Registration Review; Draft Ecological and/or Human Health Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and ecological risk assessments for the registration review of carfentrazone-ethyl, copper compounds, mineral acids, spinosad, and spinetoram and opens a public comment period on these documents. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft human health and/or ecological risk assessments for all chemicals listed in the Table of Unit III. After reviewing comments received during the public comment period, EPA will issue revised risk assessments, explain any changes to the draft risk assessments, and respond to comments and may request public input on risk mitigation before completing proposed registration review decisions for the chemicals listed in the Table of Unit III. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before November 18, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0794, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact:* The Chemical Review Manager listed in the Table of Unit III.

For general questions on the registration review program, contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; email address:*dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager listed in the Table of Unit III.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is conducting its registration review of the chemicals listed in the Table of Unit III pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations for the chemicals listed in the Table in this Unit to ensure that they continue to satisfy the FIFRA standard for registration—that is, that these chemicals can still be used without unreasonable adverse effects on human health or the environment.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name (and case No.)	Docket ID No.	Chemical review manager, email address, and telephone No.
Carfentrazone-ethyl (7422)	EPA–HQ–OPP–2010–0815	Matthew Manupella, *manupella.matthew@epa.gov,* (703) 347–0411.
Copper Compounds: Copper sulfate (0636), Copper compound group II (0649), Copper salts (4026), Copper and Oxides (4025).	EPA–HQ–OPP–2010–0212	Jordan Page, *page.jordan@epa.gov,* (703) 347–0467 Stephen Savage, *savage.stephen@epa.gov,* (703) 347–0345.
Mineral Acids (4064)	EPA–HQ–OPP–2008–0766	Stephen Savage, *savage.stephen@epa.gov,* (703) 347–0345 Matthew Manupella, *manupella.matthew@epa.gov,* (703) 347–0411.
Spinosad (7421)	EPA–HQ–OPP–2011–0667	Roy Johnson, *johnson.roy@epa.gov,* (703) 347–0492.
Spinetoram (7448)	EPA–HQ–OPP–2011–0666	Roy Johnson *johnson.roy@epa.gov,* (703) 347–0492

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and/or ecological risk assessments for the chemicals listed in the Table in this Unit. Such comments and input could address, among other things, the Agency's risk assessment methodologies and assumptions, as applied to these draft risk assessments. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to the draft ecological and/or human health risk assessments. EPA will then issue revised risk assessments, explain any changes to the draft risk assessments, and respond to comments. In the **Federal Register** notice announcing the availability of the revised risk assessments, if the revised risk assessment indicates risks of concern, the Agency may provide a comment period for the public to submit suggestions for mitigating the risk identified in the revised risk assessment before developing proposed registration review decisions for the chemicals listed in the Table in this Unit.

1. *Other related information.* Additional information on the registration review status of the chemicals listed in the Table in this Unit, as well as information on the Agency's registration review program and on its implementing regulation is available at *https://www.epa.gov/pesticide-reevaluation.*

2. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 9, 2016.

Yu-Ting Guilaran,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2016–22506 Filed 9–16–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9952–58–OA]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of advisory committee teleconference.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a public meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NACEPT members represent academia, industry, non-governmental organizations, and state, local and tribal governments. The purpose of this meeting is for NACEPT to discuss the Council's draft report regarding actions that EPA should take in response to technological and sociological developments in the area of citizen science. A copy of the meeting agenda will be posted at *http://www2.epa.gov/faca/nacept.*

DATES: NACEPT will hold a public teleconference on October 17, 2016, from 12:00 p.m. to 4:00 p.m. (EDT).

ADDRESSES: The meeting will be held at the EPA Headquarters, William Jefferson Clinton Federal Building East, Room 1132, 1201 Constitution Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Eugene Green, Designated Federal Officer, *green.eugene@epa.gov,* (202) 564–2432, U.S. EPA, Office of Resources, Operations and Management; Federal Advisory Committee Management Division (MC1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NACEPT should be sent to Eugene Green at *green.eugene@epa.gov* by October 10, 2016. The teleconference is open to the public, with limited seating available on a first-come, first-served basis. Members of the public wishing to participate in the teleconference should contact Eugene Green via email or calling (202) 564–2432 no later than October 10, 2016.

Meeting Access: Information regarding accessibility and/or accommodations for individuals with disabilities should be directed to Eugene Green at the email address or phone number listed above. To ensure adequate time for processing, please make requests for accommodations at least 10 days prior to the meeting.

Dated: September 7, 2016.

Eugene Green,

Designated Federal Officer.

[FR Doc. 2016–22479 Filed 9–16–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2016–0404; FRL–9952–57–OW]

Proposed Collection; Comment Request; Proposed Information Collection Request for the National Study of Nutrient Removal and Secondary Technologies: Publicly Owned Treatment Works (POTW) Screener Questionnaire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR) for a mandatory survey, "Proposed Information Collection Request for the National Study of Nutrient Removal and Secondary Technologies: Publicly Owned Treatment Works (POTW) Screener Questionnaire" (EPA ICR No. 2553.01, OMB Control No. 2040–NEW). Before submitting the ICR to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 18, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2016–0404 online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2016–0404, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2016–0404. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Dr. Paul Shriner, Engineering and Analysis Division (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–1076; email address: *nutrient-removal-study@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA—EPA–HQ–OW–2016–0404, which is available at *https://www.regulations.gov,* or for in person viewing at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Use *https://www.regulations.gov* to obtain a copy of the draft collection of information supporting statement, obtain a draft of the screener, review the draft mailing list of screener respondents, submit or view public comments, view the index listing of the contents of the docket, and access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the accuracy, quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). In particular, EPA is requesting comments from small POTWs (those that service a population of less than 50,000) on examples of specific additional ways EPA can reduce the paperwork burden on small facilities.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES** above.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are approximately 16,000 (but no more than 20,000) POTWs that meet the definition under 40 CFR 403.3(q), as well as up to 100 state and/or small municipal association contacts.

Title: National Study of Nutrient Removal and Secondary Technologies: Publicly Owned Treatment Works (POTW) Screener Questionnaire Information Collection Request.

ICR numbers: EPA ICR No. 2553.01, OMB Control No. 2040—NEW.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable.

Abstract: Nutrient pollution remains the single greatest challenge to our Nation's water quality, and presents a growing threat to public health and local economies—contributing to toxic harmful algal blooms, contamination of drinking water sources, and costly impacts on recreation, tourism and fisheries. The multi-phase study described here, when completed, will provide a rich database of nutrient removal performance at secondary treatment POTWs nationwide, and will help POTWs understand the range of nutrient removal performance and opportunities to optimize nutrient removals based on data from their peers. It will also serve as a major new resource for POTWs, states and stakeholders to evaluate the most cost effective approaches to nutrient reduction at the watershed scale. The EPA is collaborating with states to make greater progress in reducing nutrient loadings discharged into the Nation's waters from all sources. With this goal in mind, EPA's Office of Water is planning to collect data to evaluate the nutrient removals and related technology performance of POTWs with conventional secondary treatment. For the purposes of this study "conventional secondary treatment" are those processes used by industry to meet the regulatory requirements for secondary treatment. The goals of this study would be to establish a baseline of nutrient performance nationally for secondary treatment facilities and to document the capability of POTWs to reduce nutrient discharges by implementing changes to operations and maintenance, without making extensive capital investments.

The full study would be conducted in multiple phases over the course of four to five years, allowing for interactions with stakeholders and experts in each phase. The first phase of the study is a screener questionnaire which is the focus of this ICR.

To initiate this study, EPA first needs to update existing information on the universe of POTWs in the U.S., including tribally owned facilities, and collect basic information on the characteristics of these POTWs. There are no currently available datasets which identify all the POTWs in the country, or that identify which POTWs are conventional secondary treatment plants. These conventional secondary plants would then be the focus of study over the next four years to determine how efficiently these plants remove nutrients and how enhancements to operation and maintenance have improved that performance. EPA envisions conducting future surveys of a statistically representative sample of the population of secondary treatment plants but will not know the exact format of the collection until it receives data from this screener. Regardless of the method, EPA's objective is to create a database of the full population of POTWs in the U.S. and use that database for further statistical study of nutrient removal performance. EPA plans to make this database publically available—subject to confidentiality concerns that may arise. Currently only a small number of case studies are available documenting how secondary treatment plants can reduce nutrient discharges through enhanced operation and maintenance procedures. The study EPA is planning would provide statistically representative data on improved nutrient removal by secondary treatment plants resulting from changes in operation and maintenance. This study would help States and POTWs agree to and set well-informed and realistic nutrient load reduction targets for wastewater treatment facilities where appropriate, and provide information on the time and costs needed to make enhancements in operation and maintenance procedures.

EPA's Office of Water plans to administer the initial survey as a mandatory census of POTWs in the U.S. Clean Water Act Section 308 authority constitutes a broad authority[1] to request information to carry out any objective under the Clean Water Act. 33 U.S.C. 1318(a). Any use of 308 authority is never taken lightly by EPA, and much deliberation went into this decision. Key to our decision are the goals of the overall study and the concern that voluntary submission or self-selection could result in a low or unrepresentative survey response rate. This census, the first phase of the study, is essential to the future phases of the study. Requiring facilities to participate is necessary to identify all of the secondary treatment or equivalent facilities in the U.S. EPA's Office of Water intends to use this information for research and statistical purposes only. Information is not being collected for purposes of enforcement or to compel facilities to submit information regarding activities that might be potential violations of their National Pollution Discharge Elimination System (NPDES) permits. This census will solicit basic facility identification, characterization, and technical information necessary to develop the future detailed questionnaire, to select the sample of secondary treatment plants planned for subsequent phases of the study, and to select POTWs where future influent and effluent sampling could be conducted to document performance. EPA would prepare a second ICR for the subsequent phases of the study after the first phase census is completed and the sample frame for the subsequent phases developed. EPA is considering utilizing pre-tests, pilots, or other techniques to obtain stakeholder input in the development of the subsequent phases of this study which may not need to be conducted using 308 authority.

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[1] *See Natural Resources Defense Council, Inc.* v. *U.S. EPA*, 822 F.2d 104, 119 (D.C. Cir. 1987) ("[i]n our view, the statute's sweep is sufficient to justify broad information disclosure requirements relating to the Administrator's duties, as long as the disclosure demands which he imposes are 'reasonable.' ")

The rationale for conducting this effort as a mandatory census is two-fold. Currently there exist multiple, disparate databases containing information concerning various subsets of treatment facilities; however, each of these databases is incomplete with respect to identifying all facilities. In addition, each database has missing or incomplete data fields. Second, historic precedent indicates that voluntary survey designs have extremely low response rates and issues with bias. Both of these facts make getting an accurate, national profile of POTWs infeasible without making it mandatory to respond. EPA also intends to conduct up to 40 POTW site visits and up to 100 state and small municipality association phone contacts to solicit information on industry terminology, typical treatment trains and modes of operation, and nutrient removal technologies and operating practices, and this ICR addresses these activities as well.

EPA is limiting the information requested by the census to that which is necessary to create a complete population of POTWs and to identify basic information about that population. Questions include those necessary to identify and stratify the universe of POTWs and, within that population, the secondary treatment POTWs not designed specifically to remove nitrogen and phosphorus. A draft of the screener is available at Docket ID No. EPA–HQ–OW–2016–0404 as part of today's request for comments (see *Instructions* section of this notice for further information).

The draft screener makes use of multiple choice and yes/no questions, with the intention to use drop down menus and checkboxes from which respondents will choose the best answer. EPA is not including open-ended questions in the screener questionnaire which would likely be unwieldy due to the number and expected variation of responses and the extensive follow-up needed when entering the responses into a database. EPA intends to design the screener questionnaire as a web-based survey that POTWs can fill out and submit online. EPA intends to require the submittal of a signed certification form that will either be uploaded with the screener, or may be mailed directly to the Agency. EPA will provide a mechanism for POTWs to respond with a mailed response if they cannot access the internet. EPA is specifically soliciting comments on simplifying the census format. In addition, EPA is soliciting comments on EPA's approach to developing the mailing list, and has made a draft available in the Docket (see *Instructions* section of this notice for further information).

Burden statement: This information collection is a one-time event. The total respondent reporting and recordkeeping burden for this collection of information is estimated to average 3.5 hours per response for 90 percent of the respondents and 1.5 hours per response for 10 percent of the respondents. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. The burden estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: No more than 20,000 POTWs, 40 POTWs for site visits, 100 state or small municipal association contacts.

Frequency of response: One-time data collection.

Estimated total average burden for each respondent: POTW screener survey response—3.5 hours for 90 percent of the respondents ($147) and 1.5 hours for 10 percent of the respondents ($65); POTW site visit respondent—8 hours, $224; State/Small Municipal Association contact—1 hour, $55.

Estimated total respondent burden hours: 66,420.

Estimated total respondent costs: $2,792,713. This estimate reflects unit costs for labor and operational and maintenance costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR, the screener questionnaire, and its approach as appropriate. During this public comment period, EPA will be working with stakeholders to refine the survey instrument and will revise the instrument as appropriate after considering the comments expressed during those interactions and in response to this notice. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and a 30 day opportunity to submit comments to OMB on this ICR. If you have any questions about this ICR or the approval process, please contact the technical person listed above under **FOR FURTHER INFORMATION CONTACT.**

Dated: September 12, 2016.

Elizabeth Southerland,

Director, Office of Science and Technology.

[FR Doc. 2016–22498 Filed 9–16–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1021]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 18, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1021.

Title: Section 25.139, NGSO FCC Coordination and Information Sharing Between MVDDS Licensees in the 12.2 GHz to 12.7 GHz Band.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 6 respondents; 6 responses.

Estimated Time per Response: 6 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collections is contained in 47 U.S.C. 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j).

Total Annul Burden: 36 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Section 25.139, which the Commission adopted in the 2002 Order in ET Docket No. 98–206, requires Non-Geostationary Satellite Orbit (NGSO) Fixed-Satellite Services (FSS) licensees to maintain a subscriber database in a format that can be readily shared to enable MVDDS licensees to determine whether a proposed Multichannel Video Distribution and Data Service (MVDDS) transmitting antenna meets the minimum spacing requirement relative to qualifying, existing NGSO FSS subscriber receivers (set forth in § 101.129, FCC Rules). The Commission will use Section 25.139 to ensure that NGSO FSS licensees provide MVDDS licensees with the data needed to determine whether a proposed MVDDS transmitting site meets the minimum spacing requirement relative to certain NGSO FSS receivers.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison. Office of Secretary.

[FR Doc. 2016–22431 Filed 9–16–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 13, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Arbor Bancorp, Inc., Ann Arbor, Michigan;* to merge with Birmingham Bloomfield Bancshares, Inc., and thereby indirectly acquire Bank of Birmingham, both in Birmingham, Michigan.

2. *Sullivan Bancshares, Inc., Sullivan, Illinois;* to merge with Moultrie Bancorp, Inc., and thereby indirectly acquire Hardware State Bank, both in Lovington, Illinois.

3. *Sullivan BancShares, Inc. Employee Savings & Retirement Plan, Sullivan, Illinois;* to become a bank holding company by acquiring up to 32.90 percent of Sullivan Bancshares, Inc., and thereby acquire shares of First National Bank of Sullivan, both in Sullivan, Illinois, and Hardware State Bank, Lovington, Illinois.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Durant Bancorp, Inc., Durant, Oklahoma;* to acquire 100 percent of the voting shares of North American Bancshares, Inc., Sherman, Texas, and thereby indirectly acquire the American Bank of Texas, Sherman, Texas.

Board of Governors of the Federal Reserve System, September 13, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–22383 Filed 9–16–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects notice FR Doc. 2016–20773 published on page 59624 of the **Federal Register** on August 30, 2016.

Under the Federal Reserve Bank of Chicago heading, the entry for *Mid Illinois Bancorp, Inc., Employee Stock Ownership Plan,* Peoria, Illinois, to increase its ownership of Mid Illinois Bancorp, Inc., Peoria, Illinois, from 25.24 percent to 30 percent, and thereby increase its indirect ownership of South Side Trust and Savings Bank, Peoria, Illinois, is revised to read as follows:

Comments on this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 2016.

Board of Governors of the Federal Reserve System, September 13, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–22395 Filed 9–16–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–1015; Docket No. CDC–2016–0091]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the proposed revision of the National Electronic Health Records Survey (NEHRS), formerly approved as the National Ambulatory Medical Care Survey (NAMCS) National Electronic Health Records Survey (NEHRS). This three year revision request includes an update to the currently approved questionnaire, the addition of a follow-up survey, and a survey name change deleting the National Ambulatory Medical Care Survey (NAMCS) from the title. The purpose of NEHRS is to meet the needs and demands for statistical information about EHR adoption in physician offices in the United States.

DATES: Written comments must be received on or before November 18, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0091 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

The National Electronic Health Records Survey (NEHRS) (formerly approved as the National Ambulatory Medical Care Survey (NAMCS) National Electronic Health Records Survey (NEHRS)) (OMB No. 0920–1015, Expires 04/30/2017)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on "utilization of health care" in the United States. NEHRS was originally designed as a mail supplement to the National Ambulatory Medical Care Survey (NAMCS). Questions in NEHRS have been asked in NAMCS starting in 2001.

The purpose of NEHRS is to measure progress toward goals for electronic health records (EHRs) adoption. NEHRS target universe consists of all non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care.

NEHRS is the principal source of data on national and state-level EHR adoption in the United States. In 2008 and 2009, the sample size was 2,000 physicians annually. Starting in 2010, the annual sample size was increased five-fold, from 2,000 physicians to 10,302 physicians. The increased sample size allows for more reliable national estimates as well as state-level estimates on EHR adoption without having to be combined with NAMCS. For these reasons, in 2012 NEHRS became an independent survey, not as a supplement under NAMCS.

NEHRS collects information on characteristics of physician practices, the capabilities of EHRs in those practices, and intent to apply for meaningful use incentive payments. These data, together with trend data, may be used to monitor the adoption of EHR as well as accessing factors associated with EHR adoption.

Users of NEHRS data include, but are not limited to, Congressional offices, Federal agencies, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners.

There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden (hours)
Office-based physicians	NEHRS	10,302	1	30/60	5,151
Office-based physicians	Follow-up NEHRS	3,434	1	30/60	1,717
Total					6,868

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–22448 Filed 9–16–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–0976]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Million Hearts® Hypertension Control Challenge (OMB No. 0920–0976, exp. 7/31/2016)—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In September 2011, HHS launched the Million Hearts® initiative to prevent one million heart attacks and strokes by 2017. There is scientific evidence that provides general guidance on the types of system-based changes to clinical practice that can improve patient blood pressure control, but more information is needed to fully understand implementation practices so that they can be shared and promoted.

In 2013, CDC launched the Million Hearts® Hypertension Control Challenge (OMB No. 0920–0976, exp. 7/31/2016). The Challenge is authorized by Public Law 111–358, the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education and Science Reauthorization Act of 2010 (COMPETES Act). The annual Challenge is designed to help CDC (1) identify clinical practices and health systems that have been successful in achieving high rates of hypertension control, and (2) develop models for dissemination. The Challenge is open to single practice providers, group practice providers, and healthcare systems.

In 2013, 2014, and 2015, CDC collected information needed to assess candidates for recognition through the Million Hearts® Hypertension Control Challenge. A total of 59 public and private health care practices and systems were recognized as Million Hearts® Hypertension Control Champions for achieving exemplary levels of hypertension control in adults ages 18–85.

CDC plans to reinstate the Million Hearts® Hypertension Control Challenge, with changes, for information collection beginning in 2017. Challenges were previously launched in late summer/early fall. The 2016 Challenge is scheduled to launch in February 2017, coinciding with American Heart Month. The nomination period will be open for approximately 60 days, with recognition of the 2016 Million Hearts® Hypertension Control Champions in the fall of 2017. A similar calendar year schedule is planned for 2018 (information collection and recognition for the 2017 Champions) and 2019 (information collection and recognition for the 2018 Champions).

Information collection supporting the Challenge will be conducted in three steps. First, interested providers or practices will complete a web-based nomination form which provides the minimum amount of data needed to demonstrate evidence of clinical success in achieving hypertension control, including: (a) Two point-in-time measures of the clinical hypertension control rate for the patient population, (b) the size of the clinic population served, (c) a description of the patient population served and geographic location, and (d) a description of the sustainable systems and strategies adopted to achieve and maintain hypertension control rates. The estimated burden for completing the nomination form is 30 minutes. CDC scientists or contractors will review each nomination form and assign a preliminary score.

In the second phase of assessment, nominees with the highest preliminary scores (finalists) will be asked to participate in a one-hour data verification process. The nominee will review the nomination form with a reviewer or abstractor, describe how information was obtained from the provider's (or practice's) electronic records, chart reviews, or other sources, and review the methodology used to calculate the reported hypertension control rate. CDC conducts data verification to ensure that all nominees meet eligibility criteria and calculate their reported hypertension control rate according to a standardized method.

In the third phase of the assessment, each remaining finalist will participate in a two-hour, semi-structured interview and provide detailed information about the patient population served, the geographic region served, and the strategies employed by the practice or health system to achieve exemplary rates of hypertension control, including barriers and facilitators for those strategies.

Based on experience with administration of the Challenge in previous years, CDC plans to eliminate the cash prize awarded to Champions in previous years, and to implement minor changes to the nomination form and the data verification form that will improve usability and data quality. There are no changes to the estimated burden per response. Finally, CDC anticipates an overall reduction in burden due to a reduction in the estimated number of nominees. During the period of this Reinstatement request, on an annual basis, CDC estimates that information will be collected from up to 500 nominees using the nomination form, at most 40 data verifications, and at most 40 semi-structured interviews.

CDC will use the information collected through the Million Hearts® Hypertension Control Challenge to increase widespread attention to hypertension at the clinical practice level, improve understanding of successful and sustainable implementation strategies at the practice or health system level, bring visibility to organizations that invest in hypertension control, and motivate individual practices to strengthen their hypertension control efforts. Information collected through the Million Hearts® Hypertension Control Challenge will link success in clinical outcomes of hypertension control with information about procedures that can be used to achieve similar favorable outcomes so that the strategies can be replicated by other providers and health care systems.

OMB approval is requested for three years. Participation is voluntary and there are no costs to the respondents other than their time. The total estimated annualized burden hours are 370.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of responses	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)
Physicians (Single or Group Practices)	Million Hearts® Hypertension Control Champion Nomination form.	500	1	30/60
Finalists	Data Verification Form	40	1	1
	Semi-structured Interview	40	1	2

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–22446 Filed 9–16–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–160544; Docket No. CDC–2016–0088]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection plan entitled *Evaluation of Effectiveness of NIOSH Publications: NIOSH Customer Satisfaction and Impact Survey.*

DATES: Written comments must be received on or before November 18, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0088 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Evaluation of Effectiveness of NIOSH Publications (OMB Control No. 0920–0544, Expired 4/30/2010)—Reinstatement with Change—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As mandated in the Occupational Safety and Health Act of 1970 (Pub. L. 91–596), the mission of the National Institute for Occupational Safety and Health (NIOSH) is to conduct research and investigations on work-related disease and injury and to disseminate information for preventing identified workplace hazards (Sections 20(a)(1) and (d), Attachment 1). NIOSH is proposing a two-year study to collect stakeholder feedback on the effectiveness of NIOSH products and their dissemination. This dual responsibility recognizes the need to translate research into workplace application if it is to impact worker safety and well-being.

NIOSH, through its communication efforts, seeks to promote greater awareness of occupational hazards and their control, influence public policy and regulatory action, shape national research priorities, change organizational practices and individual behavior, and ultimately, improve American working life. NIOSH's primary communication vehicle is its series of numbered publications catalogued by the Institute as Policy Documents, Technical Documents, and Educational Documents.

The aforementioned types of documents are available to the public through the use of mailing lists, NIOSH eNews, the NIOSH Web site, promotion at conferences, and by other means. In Fiscal Year 2015, combined digital downloads and hard copy distributions of NIOSH publications registered at over 790,000. Yet, these numbers tell little of whether the reports are reaching all of the appropriate audiences, or whether the information is perceived as credible and useful by the recipients. Therefore, a Customer Satisfaction Survey (CSS) was conducted in 2003 and a follow-up CSS in 2010 to assess customer satisfaction and perceived impact of NIOSH publications.

The proposed survey seeks to update the data collected for the 2010 survey (OMB Control No. 0920–0544) and gather data on outreach initiatives NIOSH has undertaken in recent years. The findings reported in 2010 confirmed that NIOSH continues to be a credible source of occupational safety and health information, NIOSH publications were being used more frequently than in previous years, and respondents are relying more on the NIOSH Web site and other electronic resources. With regard to having read or referred to a NIOSH product or resource in the past, 82% of the total respondents said they had, and responses grouped by organization—AAOHN (80%), ACOEM (71%), AIHA (90%), and ASSE (85%)—also show an increase. However, the 2010 CSS also revealed that the percentage of respondents who looked to NIOSH for OSH information dropped from 84% in 2003 to 76% in 2009 (when the 2010 survey data were collected).

Results from the 2010 CSS suggest that NIOSH needs to partner more with stakeholder associations to assess the needs of those in the OSH community who are not using NIOSH resources. Since then, NIOSH has established a partner database, which documents the private companies, professional associations, and labor unions listed as partners on various projects. Another recommendation is that NIOSH develop strategies to increase awareness of electronic resources and newsletters. NIOSH has since established additional notifications, such as the monthly Research Rounds (*http://www.cdc.gov/niosh/research-rounds/*) that highlights research conducted at NIOSH. There also is the NIOSH Science Blog (*http://blogs.cdc.gov/niosh-science-blog/*) with articles on NIOSH research, products, and timely topics of interest to workers, employers, and other stakeholders. The NIOSH Web site also has expanded its offerings of video and multimedia products.

The third recommendation from the 2010 survey was that NIOSH develop a broader range of tools that have direct application and provide clearer guidance on policy. In addition to being offered as a downloadable PDF document, the Pocket Guide to Chemical Hazards, NIOSH's most popular product, is being offered as a mobile app as well as a PDF document, both of which can be downloaded from the NIOSH Web site (*http://www.cdc.gov/niosh/npg/*). As a larger strategy that addresses the aforementioned recommendations, NIOSH launched a 5-year Web Plan that considers the direction of the Institute's work and reviews the history of the NIOSH Web. The plan identifies five key Web challenges NIOSH will experience in 2015–2019: Adapting web content for mobile web delivery, preparing for growth of digital products and dissemination, sustainability of new digital products, developing a future strategy for new communication products and technology, and addressing projected staffing needs. Various goals have been identified as critical to maintaining NIOSH Web effectiveness in the next five years.

The currently proposed Customer Satisfaction and Impact (CSI) Survey, is an effort by the agency to obtain current estimates of consumer use/benefit from NIOSH communication products as a whole, as well as to determine the adequacy of the agency's circulation/delivery practices in light of changing distribution approaches and technologies. The CSI will account for changes in NIOSH publications, digital product formats, and new dissemination channels emerging since survey data were last collected. The CSI will also solicit more audience-based information that reflects the new media environment in which many NIOSH publications are offered. Such expansions will yield findings that show how well customer service practices at NIOSH have followed the 2003 and 2010 recommendations, as well as provide insights into how users seek and use

NIOSH information in the current digital environment.

The survey will be directed to the community of occupational safety and health (OSH) professionals as well as business and trade association intermediaries as this audience represents the primary and traditional customer base for NIOSH information materials. Intermediaries use their connections to small businesses and other organizations to disseminate information to stakeholders who might not otherwise receive it. Intermediaries include occupational health service providers, labor organizations, chambers of commerce, and insurance companies.

NIOSH estimates that it will take 315 total burden hours to complete information collections, compared to 204 burden hours estimated for the 2010 CSS. There are no costs to the respondents other than their time.

Customer Satisfaction and Impact (CSI) Survey:

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
AIHA members	NIOSH Customer Satisfaction Survey—full version.	150	1	20/60	50
AIHA Members	NIOSH Customer Satisfaction Survey—full version.	150	1	5/60	13
AAOHN Members	NIOSH Customer Satisfaction Survey—full version Work,.	150	1	20/60	50
AAOHN Members	NIOSH Customer Satisfaction Survey—short version.	150	1	5/60	13
ACOEM members	NIOSH Customer Satisfaction Survey—full version.	150	1	20/60	50
ACOEM members	NIOSH Customer Satisfaction Survey—short version.	150	1	5/60	13
ASSE members	NIOSH Customer Satisfaction Survey—full version.	150	1	20/60	50
ASSE members	NIOSH Customer Satisfaction Survey—short version.	150	1	5/60	13
Other members*	NIOSH Customer Satisfaction Survey—full version.	150	1	20/60	50
Other members	NIOSH Customer Satisfaction Survey—short version.	150	1	5/60	13
Total					315

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–22447 Filed 9–16–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

RPG National Cross-Site Evaluation 30-Day Notice

AGENCY: Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Proposed Information Collection Activity; Comment Request.

Title: RPG National Cross-Site Evaluation and Evaluation Technical Assistance.

OMB No.: 0970–0444.

Description: The Children's Bureau within the Administration for Children and Families of the U.S. Department of Health and Human Services seeks a renewal of clearance to collect information for the Regional Partnership Grants to Increase the Well-being of and to Improve Permanency Outcomes for Children Affected by Substance Abuse Cross-Site Evaluation and Evaluation-Related Technical Assistance and Data Collection Support for Regional Partnership Grant Program Round Three Sites or "RPG" projects. Under RPG, the Children's Bureau has issued 21 grants to organizations such as child welfare or substance abuse treatment providers or family court systems to develop interagency collaborations and integration of programs, activities, and services designed to increase well-being, improve permanency, and enhance the safety of children who are in an out-of-home placement or are at risk of being placed in out-of-home care as a result of a parent's or caretaker's substance use dependence. The Child and Family Services Improvement and Innovation Act (Pub. L. 112–34) includes a targeted grants program (section 437(f) of the Social Security Act) that directs the Secretary of Health and Human Services to reserve a specified portion of the appropriation for these Regional Partnership Grants, to be used to improve the well-being of children affected by substance abuse. The overall objective of the Cross-Site Evaluation and Technical Assistance projects (the RPG Cross-Site Evaluation) is to plan, develop, and implement a rigorous national cross-site evaluation of the RPG Grant Program, provide legislatively-mandated performance measurement, furnish evaluation-related technical assistance to the grantees in order to improve the quality and rigor of their local evaluations, and support their participation in the cross-site evaluation. The project will evaluate the programs and activities conducted through the RPG Program. The evaluation is being undertaken by the Children's Bureau and its contractor Mathematica Policy Research. The evaluation is being implemented by Mathematica Policy Research and its subcontractors, WRMA, Inc., and Synergy Enterprises.

The RPG Cross-Site Evaluation includes the following components:

1. *Implementation and Partnership Study.* The RPG cross-site implementation and partnership study will contribute to building the knowledge base about effective implementation strategies by examining the process of implementation in the 21 RPG projects, with a focus on factors shown in the research literature to be associated with quality implementation of evidence-based programs. This component of the study describes the RPG projects' target populations, selected interventions and their fit with the target populations, inputs to implementation, and actual services provided (including dosage, duration, content, adherence to curricula, and participant responsiveness). It examines the key attributes of the regional partnerships that grantees develop (for example, partnerships among child welfare and substance abuse treatment providers, social services, and family courts). It describes the characteristics and roles of the partner organizations, the extent of coordination and collaboration, and their potential to sustain the partnerships after the grant ends. Key data collection activities of the implementation and partnership study are: (1) Conducting site visits during which researchers interview RPG program directors, managers, supervisors, and frontline staff who work directly with families; (2) administering a survey to frontline staff involved in providing direct services to children, adults, and families; (3) asking grantees to provide information about implementation and their partnerships as part of their federally required semi-annual progress reports; (4) obtaining service use data from grantees, enrollment date and demographics of enrollees, exit date and reason, and service participation, which are entered into a web-based system operated by Mathematica Policy Research and its subcontractors; and (5) administering a survey to representatives of the partner organizations.

2. *Outcomes Study.* The goal of the outcomes study is to describe the changes that occur in children and families who participate in the RPG programs. This study will describe participant outcomes in five domains: (1) Child well-being, (2) family functioning/stability, (3) adult recovery from substance use disorder, (4) child permanency, and (5) child safety. Two main types of outcome data will be used—both of which are being collected by RPG grantees: (1) Administrative child welfare and adult substance abuse treatment records and (2) standardized instruments administered to the parents and/or caregivers. The Children's Bureau is requiring grantees to obtain and report specified administrative records, and to use a prescribed set of standardized instruments. Grantees will provide these data to the cross-site evaluation team twice a year by uploading them to a data system operated by Mathematica Policy Research and its subcontractors.

3. *Impact Study.* The goal of the impact study is to assess the impact of the RPG interventions on child, adult, and family outcomes by comparing outcomes for people enrolled in RPG services to those in comparison groups, such as people who do not receive RPG services or receive only a subset of the services. The impact study will use demographic and outcome data on both program (treatment) and comparison groups from a subset of grantees with appropriate local evaluation designs such as randomized controlled trials or strong quasi-experimental designs; 5 of the 21 grantees have such designs. Site-specific impacts will be estimated for these seven grantees. Aggregated impact estimates will be created by pooling impact estimates across appropriate sites to obtain a more powerful summary of the effectiveness of RPG interventions.

In addition to conducting local evaluations and participating in the RPG Cross-Site Evaluation, the RPG grantees are legislatively required to report performance indicators aligned with their proposed program strategies and activities. A key strategy of the RPG Cross-Site Evaluation is to minimize burden on the grantees by ensuring that the cross-site evaluation, which includes all grantees in a study that collects data to report on implementation, the partnerships, and participant characteristics and outcomes, fully meets the need for performance reporting. Thus, rather than collecting separate evaluation and performance indicator data, the grantees need only participate in the cross-site evaluation. In addition, using the standardized instruments that the Children's Bureau has specified will ensure that grantees have valid and reliable data on child and family outcomes for their local evaluations. The inclusion of an impact study conducted on a subset of grantees with rigorous designs will also provide the Children's Bureau, Congress, grantees, providers, and researchers with information about the effectiveness of RPG programs.

A 60-Day **Federal Register** Notice was published for this study on June 24, 2016. This 30-Day **Federal Register** Notice covers the following data collection activities: (1) The site visits with grantees; (2) the web-based survey of frontline staff who provide direct services to children, adults, and families, and their supervisors; (3) the semi-annual progress reports; (4) enrollment and service data provided by grantees; (5) the web-based survey of grantee partners; and (6) outcome data provided by grantees.

Respondents. Respondents include grantee staff or contractors (such as local evaluators) and partner staff. Specific types of respondents and the expected number per data collection effort are noted in the burden table below.

Annual burden estimates. The following instruments are proposed for public comment under this 30-Day **Federal Register** Notice. Burden for all components is annualized over three years.

RPG CROSS-SITE EVALUATION ANNUALIZED BURDEN ESTIMATES

Data collection activity	Total number of respondents	Number of responses per respondent	Average burden hours per response (in hours)	Estimated Total burden hours	Total Annual burden hours
Implementation and Partnership Study					
Program director individual interview	4	1	2	8	2.67
Program manager/supervisor group interview	36	1	2	72	24
Program manager/supervisor individual interviews	24	1	1	24	8
Frontline staff individual interviews	24	1	1	24	8
Semi-annual progress reports	21	6	16.5	2,079	693
Case enrollment data	63	90	0.25	1,417.5	472.5

RPG CROSS-SITE EVALUATION ANNUALIZED BURDEN ESTIMATES—Continued

Data collection activity	Total number of respondents	Number of responses per respondent	Average burden hours per response (in hours)	Estimated Total burden hours	Total Annual burden hours
Service log entries	126	2,340	0.05	14,742	4,914
Staff survey	80	1	0.42	33.6	11.2
Partner survey	80	1	0.33	26.4	8.8
Data Entry for Outcomes Study					
Administrative Data:					
Obtain access to administrative data	21	2	18	378	126
Report administrative data	21	6	144	18,144	6,048
Standardized instruments:					
Enter data into local database	21	6	112.5	14,175	4,725
Review records and submit	21	6	100	12,600	4,200
Additional Data Entry for Impact Study					
Data entry for comparison study sites (7 grantees)	5	1	.25	1,085	361.6
Estimated Total Burden Hours					21,602.77

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Children's Bureau within the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW., Washington, DC 20416, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRASUBMISSION@OMB.EoP.GOV,* Attn: Desk Officer for the Administration of Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–22458 Filed 9–16–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request; Child Care and Development Fund Financial Report (ACF–696) for States and Territories

OMB No.: 0970–0163.

Description: States and Territories use the Financial Report Form ACF–696 to report Child Care and Development Fund (CCDF) expenditures. Authority to collect and report this information is found in section 658G of the Child Care and Development Block Grant Act of 1990, as revised. In addition to the Program Reporting Requirements set forth in 45 CFR part 98, subpart H, the regulations at 45 CFR 98.65(g) and 98.67(c)(1) authorize the Secretary to require financial reports as necessary.

The form provides specific data regarding claims and provides a mechanism for States to request Child Care grant awards and to certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor Child Care and Development Fund expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress.

The previous information collection requirements related to the American Recovery and Reinvestment Act (ARRA) of 2009, (Pub. L.111–5) have been deleted from this reporting form.

Respondents: States and territories.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696	56	4	5	1120

Estimated Total Annual Burden Hours: 1120.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–22449 Filed 9–16–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2633]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; 4-Methylethcathinone and Eleven Other Substances; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit comments concerning abuse potential, actual abuse, medical usefulness, trafficking, and impact of scheduling changes on availability for medical use of 12 drug substances. These comments will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding the abuse liability and diversion of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. This notice requesting comments is required by the Controlled Substances Act (the CSA).

DATES: Submit either electronic or written comments by October 4, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–2633 for "International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (U-47700); Butyrfentanyl (Butyrylfentanyl); 4-Methylethcathinone (4-MEC); 3-Methylmethcathinone (3-methyl-N-methylcathinone; 3-MMC); Ethylone (3,4-methylenedioxy-N-ethylcathinone; bk-MDEA; MDEC); Pentedrone (α-Methylaminovalerophenone); Ethylphenidate (EPH); Methiopropamine (MPA); MDMB-CHMICA; 5F–APINACA (5F–AKB48); JWH–073; XLR–11 (5-Fluoro UR-144, 5F-UR-144); Request for Comments." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: James R. Hunter, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5150, Silver Spring, MD 20993–0002, 301–796–3156, email: *james.hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (Psychotropic Convention). Article 2 of the Psychotropic Convention provides that if a party to the convention or WHO has information about a substance, which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations (the U.N. Secretary-General) and provide the U.N. Secretary-General with information in support of its opinion.

Section 201 of the CSA (21 U.S.C. 811) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when WHO notifies the United States under Article 2 of the Psychotropic Convention that it has information that may justify adding a drug or other substances to one of the schedules of the Psychotropic Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services (Secretary of HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments that will be considered by HHS in its preparation of the scientific and medical evaluations of the drug or substance.

II. WHO Notification

The Secretary of HHS received the following notice from WHO (non-relevant text removed):

Ref.: C.L.28.2015

The World Health Organization (WHO) presents its compliments to Member States and Associate Members and has the pleasure of informing that the Thirty-eighth Expert Committee on Drug Dependence (ECDD) will meet in Geneva from 14 to 18 November 2016 to review a number of substances with potential for dependence, abuse and harm to health, and will make recommendations to the U.N. Secretary-General, on the need for and level of international control of these substances.

At its 126th session in January 2010, the Executive Board approved the publication "Guidance on the WHO review of psychoactive substances for international control" (EB126/2010/REC1, Annex 6) which requires the Secretariat to request relevant information from Ministers of Health in Member States to prepare a report for submission to the ECDD. For this purpose, a questionnaire was designed to gather information on the legitimate use, harmful use, status of national control and potential impact of international control for each substance under evaluation. Member States are invited to collaborate, as in the past, in this process by providing pertinent information as requested in the questionnaire and concerning substances under review.

It would be appreciated if a person from the Ministry of Health could be designated as the focal point responsible for coordinating and answering the questionnaire. The designated focal point, and only this person, should access and complete the questionnaires:

1. U-47700;
2. Butyrfentanyl (Butyrylfentanyl);
3. 4-Methylethcathinone (4-MEC);
4. 3-Methylmethcathinone (3-methyl-N-methylcathinone; 3-MMC);
5. Ethylone (3,4-methylenedioxy-N-ethylcathinone; bk-MDEA; MDEC);
6. Pentedrone (α-Methylaminovalerophenone);
7. Ethylphenidate (EPH);
8. Methiopropamine (MPA);
9. MDMB-CHMICA;
10. 5F-APINACA (5F-AKB48);
11. JWH-073;
12. XLR-11 (5-Fluoro UR-144, 5F-UR-144).

For ease of reference a PDF version of the questionnaire in English, French and Spanish may be downloaded from the link *http://www.who.int/medicines/access/controlled-substances/ecdd/en/*. Please note that these versions are for reference only and all questionnaires must be answered through the online system. Further clarification regarding the questionnaire may be obtained from the Secretariat by emailing: *ecddsecretariat@who.int*.

Replies to the questionnaire must reach the Secretariat by 20 September 2016 in order to facilitate analyses and preparation of the report before the planned meeting. Where there is a competent National Authority under the International Drug Control Treaties, it is kindly requested that the questionnaire be completed in collaboration with such body.

The summary information from the questionnaire will be published online as part of the report on the Web site for the 38th ECDD linked to the Department of Essential Medicines and Health Products (EMP).

The World Health Organization takes this opportunity to renew to Member States and Associate Members the assurance of its highest consideration.

GENEVA, 8 August 2016

HHS received an extension from WHO that replies to the questionnaire must reach the Secretariat by October 11, 2016. FDA has verified the Web site addresses contained in the WHO notice, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

III. Substances Under WHO Review

U-47700 is a synthetic opioid drug developed in the 1970s. U-47700 is structurally related to the opioid AH-7921. U-47700 is selective for the μ-opioid receptor. U-47700 has never been studied on humans, but would be expected to produce effects similar to those of other potent opioid agonists, including strong analgesia, sedation, euphoria, constipation, itching, and respiratory depression which could be harmful or fatal. Overdoses and overdose fatalities have been directly attributed to U-47700 misuse. There have been reports of U-47700 being encountered in counterfeit pills. On September 7, 2016, the Drug Enforcement Administration issued a notice of intent to temporarily schedule U-47700 into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act.

Butyrfentanyl (butyrylfentanyl) is a synthetic opioid and analog of fentanyl. Fentanyl is controlled in Schedule II of the CSA, and an active ingredient in drug products approved for medical use and marketed in the United States. Butyrylfentanyl has a pharmacological profile similar to that of fentanyl and other μ-opioid receptor agonists. Risks associated with abuse of butyrylfentanyl include development of substance use disorder, overdose, and death similar to that of other μ-opioid agonists. The U.S. Drug Enforcement Administration (DEA) is aware of at least 40 confirmed fatalities associated with butyrylfentanyl. It has no approved medical use in the United States. On May 12, 2016, butyrylfentanyl was temporarily placed into Schedule I of the CSA for 2 years upon finding that it posed an imminent hazard to the public safety. The Attorney General, though, may extend this temporary scheduling for up to 1 year.

4-Methylethcathinone (4-MEC), 3-Methylmethcathinone (3-methyl-N-methylcathinone; 3-MMC): 3-methyl-methcathinone (3-MMC), pentedrone, and ethylone (3,4-methylenedioxy-N-ethylcathinone; bk-MDEA; MDEC) are synthetic cathinones that are structurally and pharmacologically similar to amphetamine, 3-4 methylenedioxymethamphetamine (MDMA), cathinone, and other related substances. These substances are central nervous system stimulants with psychoactive properties similar to Schedule I and II amphetamine type substances. Public health risks associated with the use of synthetic cathinones suggest that these substances are associated with cardiac, psychiatric, and neurological symptoms that may lead to emergency department admissions, violent behaviors causing harm to self or others, or death. 4-MEC, 3-MMC, pentedrone, and ethylone have no known medical use in the United States. On March 7, 2014, the DEA published a final order in the **Federal Register** amending 21 CFR 1308.11(h) to temporarily place 4-MEC and pentedrone into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). On March 4, 2016, the temporary Schedule I status of 4-MEC and pentedrone was extended for 1 year, or until permanent scheduling is completed. Permanent scheduling for 4-MEC and pentedrone was initiated on March 4, 2016, upon publication of the notice of proposed rulemaking. As a positional isomer of 4-methylmethcathinone, 3-MMC is considered a Schedule I substance under the CSA. In the United States, ethylone has been sold as the street drug "Molly" and encountered as a replacement for methylone. As a positional isomer of the controlled drug butylone, ethylone is considered a Schedule I controlled substance under the CSA.

Ethylphenidate (EPH) is structurally related to methylphenidate. Methylphenidate is controlled in Schedule IV of the CSA, and an active ingredient in drug products approved for medical use and marketed in the United States. Ethylphenidate is not approved for medical use in the United States. Ethylphenidate is structurally related to methylphenidate are being marketed as novel psychoactive substances with psychoactive effects similar to methylphenidate, therefore posing similar health risks to the users. Ethylphenidate is a controlled substance in several European countries, and is not a controlled substance in the United States under the CSA.

Methiopropamine (MPA) is a structural analogue of the Schedule II controlled substance methamphetamine. Pharmacologically, it functions as a norepinephrine-dopamine reuptake inhibitor and, secondarily, as a serotonin reuptake inhibitor. MPA is a thiophene based analog of methamphetamine. It has stimulant properties as an inhibitor of dopamine, norepinephrine transporters in the central nervous system. MPA was critically reviewed by the WHO at its 36th meeting of the Expert Committee on Drug Dependence in June 2014. It is not approved for medical use or controlled in the United States under the CSA, but is a controlled substance in the United Kingdom.

MDMB-CHMICA is an indole-based synthetic cannabinoid that is a potent full agonist at CB1 receptors and mimics functionally (biologically) the effects of the structurally unrelated delta-9-tetrahydrocannabinol (THC), a Schedule I substance, and the main active ingredient of marijuana. Synthetic cannabinoids are marketed under the guise of "herbal incense," and promoted by drug traffickers as legal alternatives to marijuana. MDMB-CHMICA use is associated with serious adverse events including death in several European countries. There are no commercial or approved medical uses for MDMB-CHMICA. MDMB-CHMICA is not controlled under the CSA, but may be treated as a "controlled substance analogue" under the CSA pursuant to 21 U.S.C 802(32)(A) and 813, and is a controlled substance in the State of Louisiana.

5F-APINACA (5F-AKB48) is a synthetic cannabinoid belonging to a chemical structural class with an indazole core. In vitro studies show that it binds to the cannabinoid CB1 receptors and displays agonist properties in functional assays, suggesting that it would share in vivo effects with delta-9-THC and various synthetic cannabinoids. There are no commercial or medical uses for 5F-APINACA. Synthetic cannabinoids are marketed under the guise of "herbal incense," and promoted by drug traffickers as legal alternatives to marijuana. SF-APINACA is not a controlled substance under the CSA, but may be treated as a "controlled substance analogue" under the CSA pursuant to 21 U.S.C. 802(32)(A) and 813.

JWH-073 is an indole-based synthetic cannabinoid agonist without the classical cannabinoid chemical structure. Pharmacology studies have been conducted on this substance. Behavioral pharmacology studies show that JWH-073 has delta-9-THC-like activity in animals. Synthetic cannabinoids are marketed under the guise of "herbal incense," and promoted by drug traffickers as legal alternatives to marijuana. On March 1, 2011, JWH-073 was temporarily controlled in Schedule I and on July 9, 2012, JWH-073 was permanently controlled as a Schedule I substance under the CSA.

XLR-11 (5-Fluoro-UR-144, 5F-UR-144) is an indole-based synthetic cannabinoid and acts as an agonist at cannabinoid CB1 receptors. Animal studies indicate that it mimics functionally (biologically) the effects of the structurally unrelated delta-9-THC, a Schedule I substance, and the main active ingredient of marijuana and numerous other Schedule I synthetic cannabinoids. Synthetic cannabinoids are marketed under the guise of "herbal incense," and promoted by drug traffickers as legal alternatives to marijuana. On May 16, 2013, XLR-11 was temporarily placed under Schedule I and on May 11, 2016, XLR11 was permanently controlled as a Schedule I substance under the CSA.

IV. Opportunity To Submit Domestic Information

As required by section 201(d)(2)(A) of the CSA, FDA, on behalf of the Department of Health and Human Services (HHS), invites interested persons to submit comments regarding the 12 named drugs. Any comments received will be considered by HHS when it prepares a scientific and medical evaluation of these drugs. HHS will forward a scientific and medical evaluation of these drugs to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend international control/decontrol of any of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs and could impose certain recordkeeping requirements on them.

Although FDA is, through this notice, requesting comments from interested persons which will be considered by HHS when it prepares an evaluation of these drugs, HHS will not now make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Instead, HHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in early 2017. Any HHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comments, as required by section 201(d)(2)(B) of the CSA.

V. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: September 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22472 Filed 9–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–1112]

Health Canada and United States Food and Drug Administration Joint Public Consultation on International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use; Public Meeting and Webcast

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting and Webcast; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a regional public meeting (which will also be Webcast) entitled "Health Canada and U.S. Food and Drug Administration Joint Public Consultation on International Council for Harmonisation of Technical

Requirements for Pharmaceuticals for Human Use (ICH)." The goal of this meeting is to provide information and receive comments on the current activities of ICH, as well as the upcoming ICH meetings in Osaka, Japan, in November 2016. The topics to be discussed are the topics for discussion at the forthcoming ICH Assembly Meeting in Osaka. The purpose of this public meeting is to solicit public input prior to the next ICH Assembly meeting and the Expert Working Group meetings in Osaka, Japan, scheduled for November 6 through November 11, 2015.

DATES: The public meeting will be held on October 24, 2016, from 1 p.m. to 3 p.m., EST. Registration to attend the meeting and requests for oral presentations must be received by October 21, 2016; see the **SUPPLEMENTARY INFORMATION** section for information on how to register for the meeting. Interested persons may submit either electronic or written comments to the public docket (see **ADDRESSES**) by October 19, 2016.

ADDRESSES: The meeting will be held at Sir Frederick G. Banting Research Centre, 251 Sir Frederick Banting Driveway, Ottawa, ON K1Y 0M1, Canada. It will also be broadcast on the Web allowing participants to join in person or via the Web.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–1112 for "Health Canada and U.S. Food and Drug Administration Joint Public Consultation on International Council on Harmonisation of Technical Requirements for Pharmaceuticals for Human Use; Public Meeting." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amanda Roache, Food and Drug Administration, Center for Drug Evaluation and Research, Office of Strategic Programs, 10903 New Hampshire Ave., Bldg. 51, Rm. 1176, Silver Spring, MD 20993, 301–796–4548, email: *Amanda.Roache@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The ICH, formerly known as the International Conference on Harmonisation was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness. In 2015 the ICH was reformed to make the ICH a true global initiative that expands beyond the previous ICH members. More involvement from regulators around the world is expected, as they will join their counterparts from Europe, Japan, the United States, Canada, and Switzerland as ICH regulatory members. The reforms build on a 25-year track record of successful delivery of harmonized guidelines for global pharmaceutical development, and their regulation. In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory Agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the ICH regions over the past two decades. The current ICH process and structure can be found at the following Web site: *http://www.ich.org.* (FDA has verified the Web site addresses as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.)

II. Webinar Attendance and Participation

A. Registration

If you wish to attend the meeting, please register at the following Web site: *https://healthcanada-usfda_ich_consultation.eventbrite.ca.* Registrations may be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, the number of participants from each organization may be limited based on space limitations. Registrants will receive confirmation once they have been accepted. If you need special accommodations because of a disability, please contact Amanda Roache (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the Webinar.

B. Requests for Oral Presentations

Interested persons may present data, information, or views orally or in writing on issues pending at the public Webinar. Public oral presentations will be scheduled between approximately 2:30 p.m. and 3 p.m. Time allotted for oral presentations may be limited to 5 minutes. Those desiring to make oral presentations should notify Amanda Roache (see **FOR FURTHER INFORMATION CONTACT**) by October 19, 2016, and submit a brief statement of the general nature of the evidence or arguments they wish to present; the names and addresses, telephone number, FAX, and email of proposed participants; and an indication of the approximate time requested to make their presentation. The agenda for the public Webinar will be made available on the Internet at *http://www.fda.gov/Drugs/NewsEvents/ucm516166.htm.*

Dated: September 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22471 Filed 9–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2683]

Agency Information Collection Activities; Proposed Collection; Comment Request; Data To Support Social and Behavioral Research as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a generic clearance to collect information to support social and behavioral research used by FDA about drug products.

DATES: Submit either electronic or written comments on the collection of information by November 18, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–2683 for "Data To Support Social and Behavioral Research as Used by the Food and Drug Administration." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Data To Support Social and Behavioral Research as Used by the Food and Drug Administration—(OMB Control Number 0910—NEW)

Understanding patients, consumers and health care professionals' perceptions and behaviors plays an important role in improving FDA's regulatory decisionmaking processes and communications impacting various stakeholders. The methods to be employed to achieve these goals include individual indepth interviews, general public focus group interviews, intercept interviews, self-administered surveys, gatekeeper surveys, and focus group interviews. The methods to be used serve the narrowly defined need for direct and informal opinion on a specific topic and as a qualitative and quantitative research tool, and have two major purposes:

1. To obtain information that is useful for developing variables and measures for formulating the basic objectives of social and behavioral research and;
2. To assess the potential effectiveness of FDA communications, behavioral interventions and other materials in reaching and successfully communicating and addressing behavioral change with their intended audiences.

FDA will use these methods to test and refine its ideas and to help develop communication and behavioral strategies research, but will generally conduct further research before making important decisions such as adopting new policies and allocating or redirecting significant resources to support these policies.

FDA's Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research, Office of the Commissioner, and any other Centers or Offices will use this mechanism to test communications and social and behavioral methods about regulated drug products on a variety of subjects related to consumer, patient, or healthcare professional perceptions, beliefs, attitudes, behaviors and use of drug and biological products and related materials, including, but not limited to, social and behavioral research, decisionmaking processes, and communication and behavioral change strategies.

Annually, FDA projects about 45 social and behavioral studies using the variety of test methods listed in this document. FDA is requesting this burden so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (minutes)	Total hours
Interviews/Surveys	20,000	1	20,000	15	5,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22437 Filed 9–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–2033]

Agency Information Collection Activities; Proposed Collection; Comment Request; Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a survey entitled "Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types (2015–2025)."

DATES: Submit either electronic or written comments on the collection of information by November 18, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–N–2033 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Retail and Foodservice Facility Types (2015–2025)—OMB Control Number 0910–0799—Extension

I. Background

From 1998 to 2008, FDA's National Retail Food Team conducted a study to measure trends in the occurrence of foodborne illness risk factors, preparation practices, and employee behaviors most commonly reported to the Centers for Disease Control and Prevention as contributing factors to foodborne illness outbreaks at the retail level. Specifically, data was collected by FDA Specialists in retail and foodservice establishments at 5-year intervals (1998, 2003, and 2008) in order to observe and document trends in the occurrence of the following foodborne illness risk factors:

- Food from Unsafe Sources,
- Poor Personal Hygiene,
- Inadequate Cooking,
- Improper Holding/Time and Temperature, and
- Contaminated Equipment/Cross-Contamination.

FDA developed reports summarizing the findings for each of the three data collection periods (1998, 2003, and 2008) (Refs. 1 to 3). Data from all three data collection periods were analyzed to detect trends in improvement or regression over time and to determine whether progress had been made toward the goal of reducing the occurrence of foodborne illness risk factors in selected retail and foodservice facility types (Ref. 4).

Using this 10-year survey as a foundation, in 2013–2014, FDA initiated a new study in full service and fast food restaurants. This study will span 10 years with additional data collections planned for 2017–2018 and 2021–2022.

FDA is currently collecting data in select institutional foodservice, schools, and retail food store facility types in 2015–2016. This proposed study will also span 10 years with additional data collections planned for 2019–2020 and 2023–2024.

The current data collection in selected institutional foodservice, schools, and retail food store facilities was initiated on October 1, 2016, with a target date for completion by December 31, 2016. FDA is requesting a 90 day extension to complete this data collection by March 31, 2017. The extension is being requested to ensure that the number of facilities included in the study provide a sufficient sample size to conduct statistically significant analysis.

TABLE 1—DESCRIPTION OF THE FACILITY TYPES INCLUDED IN THE SURVEY

Facility type	Description
Health Care Facilities	Hospitals and long-term care facilities foodservice operations that prepare meals for highly susceptible populations as defined as follows: • Hospitals—A foodservice operation that provides for the nutritional needs of inpatients by preparing meals and transporting them to the patient's room and/or serving meals in a cafeteria setting (meals in the cafeteria may also be served to hospital staff and visitors). • Long-term care facilities—A foodservice operation that prepares meals for the residents in a group care living setting such as nursing homes and assisted living facilities. **Note:** For the purposes of this study, health care facilities that do not prepare or serve food to a highly susceptible population, such as mental health care facilities, are not included in this facility type category.
Schools (K–12)	Foodservice operations that have the primary function of preparing and serving meals for students in one or more grade levels from kindergarten through grade 12. A school foodservice may be part of a public or private institution.
Retail Food Stores	Supermarkets and grocery stores that have a deli department/operation as described as follows: • Deli department/operation—Areas in a retail food store where foods, such as luncheon meats and cheeses, are sliced for the customers and where sandwiches and salads are prepared on-site or received from a commissary in bulk containers, portioned, and displayed. Parts of deli operations may include: • Salad bars, pizza stations, and other food bars managed by the deli department manager. • Areas where other foods are cooked or prepared and offered for sale as ready-to-eat and are managed by the deli department manager. Data will also be collected in the following areas of a supermarket or grocery store, if present: • Meat and seafood department/operation—Areas in a retail food store where raw animal food products, such as beef, pork, poultry, or seafood, are cut, prepared, stored, or displayed for sale to the consumer. • Produce department/operation—Areas in a retail food store where produce is cut, prepared, stored, or displayed for sale to the consumer. A produce operation may include salad bars or juice stations that are managed by the produce manager.

The purpose of the study is to:

- Assist FDA with developing retail food safety initiatives and policies focused on the control of foodborne illness risk factors;
- Identify retail food safety work plan priorities and allocate resources to enhance retail food safety nationwide;
- Track changes in the occurrence of foodborne illness risk factors in retail and foodservice establishments over time; and
- Inform recommendations to the retail and foodservice industry and State, local, tribal, and territorial regulatory professionals on reducing the occurrence of foodborne illness risk factors.

The statutory basis for FDA conducting this study is derived from the Public Health Service Act (PHS Act) (42 U.S.C. 243, section 311(a)). Responsibility for carrying out the provisions of the PHS Act relative to food protection was transferred to the Commissioner of Food and Drugs in 1968 (21 CFR 5.10(a)(2) and (4)). Additionally, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) and the Economy Act (31 U.S.C. 1535) require FDA to provide assistance to other Federal, State, and local government bodies.

The objectives of the study are to:

- Identify the foodborne illness risk factors that are in most need of priority attention during each data collection period;
- Track trends in the occurrence of foodborne illness risk factors over time;
- Examine potential correlations between operational characteristics of food establishments and the control of foodborne illness risk factors;
- Examine potential correlations between elements within regulatory retail food protection programs and the

control of foodborne illness risk factors; and

- Evaluate the impact of industry food safety management systems in controlling the occurrence of foodborne illness risk factors.

The methodology to be used for this information collection is described as follows. To obtain a sufficient number of observations to conduct statistically significant analysis, FDA will conduct approximately 400 data collections in each facility type. This sample size has been calculated to provide for sufficient observations to be 95 percent confident that the compliance percentage is within 5 percent of the true compliance percentage.

A geographical information system database containing a listing of businesses throughout the United States provides the establishment inventory for the data collections. FDA samples establishments from the inventory based on the descriptions in table 1. FDA does not intend to sample operations that handle only prepackaged food items or conduct low-risk food preparation activities. The ''FDA Food Code'' contains a grouping of establishments by risk, based on the type of food preparation that is normally conducted within the operation (Ref. 5). The intent is to sample establishments that fall under risk categories 2 through 4.

FDA has approximately 25 Regional Retail Food Specialists (Specialists) who serve as the data collectors for the 10-year study. The Specialists are geographically dispersed throughout the United States and possess technical expertise in retail food safety and a solid understanding of the operations within each of the facility types to be surveyed. The Specialists are also standardized by FDA's Center for Food Safety and Applied Nutrition personnel in the application and interpretation of the FDA Food Code (Ref. 5).

Sampling zones have been established that are equal to the 150-mile radius around a Specialist's home location. The sample is selected randomly from among all eligible establishments located within these sampling zones. The Specialists are generally located in major metropolitan areas (*i.e.*, population centers) across the contiguous United States. Population centers usually contain a large concentration of the establishments FDA intends to sample. Sampling from the 150-mile radius sampling zones around the Specialists' home locations provides three advantages to the study:

1. It provides a cross-section of urban and rural areas from which to sample the eligible establishments.

2. It represents a mix of small, medium, and large regulatory entities having jurisdiction over the eligible establishments.

3. It reduces overnight travel and therefore reduces travel costs incurred by the Agency to collect data.

The sample for each data collection period is evenly distributed among Specialists. Given that participation in the study by industry is voluntary and the status of any given randomly selected establishment is subject to change, substitute establishments have been selected for each Specialist for cases where the institutional foodservice, school, or retail food facility is misclassified, closed, or otherwise unavailable, unable, or unwilling to participate.

Prior to conducting the data collection, Specialists contact the State or local jurisdiction that has regulatory responsibility for conducting retail food inspections for the selected establishment. The Specialist verifies with the jurisdiction that the facility has been properly classified for the purposes of the study and is still in operation. The Specialist ascertains whether the selected facility is under legal notice from the State or local regulatory authority. If the selected facility is under legal notice, the Specialist will not conduct a data collection, and a substitute establishment will be used. An invitation is extended to the State or local regulatory authority to accompany the Specialist on the data collection visit.

A standard form is used by the Specialists during each data collection. The form is divided into three sections: Section 1—''Establishment Information''; Section 2—''Regulatory Authority Information''; and Section 3—''Foodborne Illness Risk Factor and Food Safety Management System Assessment''. The information in Section 1—''Establishment Information'' of the form is obtained during an interview with the establishment owner or person in charge by the Specialist and includes a standard set of questions.

The information in Section 2—''Regulatory Authority Information'' is obtained during an interview with the program director of the State or local jurisdiction that has regulatory responsibility for conducting inspections for the selected establishment. Section 3 includes three parts: Part A for tabulating the Specialists' observations of the food employees' behaviors and practices in limiting contamination, proliferation, and survival of food safety hazards; Part B for assessing the food safety management being implemented by the facility; and Part C for assessing the frequency and extent of food employee hand washing. The information in Part A is collected from the Specialists' direct observations of food employee behaviors and practices. Infrequent, nonstandard questions may be asked by the Specialists if clarification is needed on the food safety procedure or practice being observed. The information in Part B is collected by making direct observations and asking followup questions of facility management to obtain information on the extent to which the food establishment has developed and implemented food safety management systems. The information in Part C is collected by making direct observations of food employee hand washing. No questions are asked in the completion of Section 3, Part C of the form.

FDA collects the following information associated with the establishment's identity: Establishment name, street address, city, state, zip code, county, industry segment, and facility type. The establishment identifying information is collected to ensure the data collections are not duplicative. Other information related to the nature of the operation, such as seating capacity and number of employees per shift, is also collected. Data will be consolidated and reported in a manner that does not reveal the identity of any establishment included in the study.

FDA is working with the National Center for Food Protection and Defense to develop a Web-based platform in FoodSHIELD to collect, store, and analyze data for the Retail Risk Factor Study. Once developed, this platform will be accessible to State, local, territorial, and tribal regulatory jurisdictions to collect data relevant to their own risk factor studies. FDA is currently transitioning from the manual entry of data to the use of hand-held technology. Contingent upon the completion of the Web-based platform, FDA intends to pilot test the use of hand-held technology during its 2015–2016 risk factor study data collection in institutional foodservice, school, and retail food store facility types, with the goal to have it fully implemented by the next data collection in restaurant facility types that will occur in 2017–2018. When a data collector is assigned a specific establishment, he or she conducts the data collection and enters the information into the Web-based data platform. The interface will support the manual entering of data, as well as the ability to upload a fillable PDF.

The burden for this collection of information is as follows. For each data collection, the respondents includes: (1) The person in charge of the selected facility type (whether it be a health care facility, school, or supermarket/grocery store); and (2) the program director (or designated individual) of the respective regulatory authority. To provide the sufficient number of observations needed to conduct a statistically significant analysis of the data, FDA has determined that 400 data collections will be required in each of the three facility types. Therefore, the total number of responses will be 2,400 (400 data collections × 3 facility types × 2 respondents per data collection).

The burden associated with the completion of Sections 1 and 3 of the form is specific to the persons in charge of the selected facilities. It includes the time it will take the persons in charge to accompany the data collectors during the site visit and answer the data collectors' questions. The burden related to the completion of Section 2 of the form is specific to the program directors (or designated individuals) of the respective regulatory authorities. It includes the time it will take to answer the data collectors' questions and is the same regardless of the facility type.

To calculate the estimate of the hours per response, FDA uses the average data collection duration for similar facility types during FDA's 2008 Risk Factor Study (Ref. 3) plus an extra 30 minutes (0.5 hours) for the information collection related to Section 3, Part B of the form. FDA estimates that it will take the persons in charge of health care facility types, schools, and retail food stores 150 minutes (2.5 hours), 120 minutes (2 hours), and 180 minutes (3 hours), respectively, to accompany the data collectors while they complete Sections 1 and 3 of the form. FDA estimates that it will take the program director (or designated individual) of the respective regulatory authority 30 minutes (0.5 hours) to answer the questions related to Section 2 of the form. The total burden estimate for a data collection, including both the program director's and the person in charge's responses, in health care facility types is 180 minutes (150+30)(3 hours), in schools is 150 minutes (120+30)(2.5 hours), and in retail food stores is 210 minutes (180+30)(3.5 hours).

Based on the number of entry refusals from the 2013–2014 Risk Factor Study in the restaurant facility types, we estimate a refusal rate of 2 percent in the institutional foodservice and retail food store facility types. The estimate of the time per non-respondent is 5 minutes (0.08 hours) for the person in charge to listen to the purpose of the visit and provide a verbal refusal of entry.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Number of non-respondents	Number of responses per non-respondent	Total annual non-responses	Average burden per response	Total hours
2015–2016 Data Collection (Health Care Facilities)—Completion of Sections 1 and 3.	400	1	400				2.5	1,000
2015–2016 Data Collection (Schools)—Completion of Sections 1 and 3.	400	1	400				2	800
2015–2016 Data Collection (Retail Food Stores)—Completion of Sections 1 and 3.	400	1	400				3	1,200
2015–2016 Data Collection-Completion of Section 2—All Facility Types.	1,200	1	1,200				0.5	600
2017–2018 Data Collection-Entry Refusals—All Facility Types.				24	1	24	0.08 (5 minutes)	1.92
Total Hours								3,601.92

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references are on display in the Division of Dockets Management (see ADDRESSES) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov*. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. "Report of the FDA Retail Food Program Database of Foodborne Illness Risk Factors (2000)." Available at: *http://www.fda.gov/downloads/Food/FoodSafety/RetailFoodProtection/FoodborneIllnessandRiskFactorReduction/RetailFoodRiskFactorStudies/ucm123546.pdf.*
2. "FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (2004)." Available at: *http://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FoodborneIllnessRiskFactorReduction/UCM423850.pdf.*
3. "FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (2009)." Available at: *http://www.fda.gov/downloads/Food/FoodSafety/RetailFoodProtection/FoodborneIllnessandRiskFactorReduction/RetailFoodRiskFactorStudies/UCM224682.pdf.*
4. FDA National Retail Food Team. "FDA Trend Analysis Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (1998–2008)." Available at: *http://www.fda.gov/downloads/Food/FoodSafety/RetailFoodProtection/FoodborneIllnessandRiskFactorReduction/RetailFoodRiskFactorStudies/UCM224152.pdf.*
5. "FDA Food Code." Available at: *http://www.fda.gov/FoodCode.*

Dated: September 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22438 Filed 9–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3326]

Biosimilar User Fee Act; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a public meeting to discuss proposed recommendations for the reauthorization of the Biosimilar User Fee Act (BsUFA) for fiscal years (FYs) 2018 through 2022. BsUFA authorizes FDA to collect fees and use them for the process for the review of biosimilar biological product applications. The current legislative authority for BsUFA expires in September 2017. At that time, new legislation will be required for FDA to continue collecting biosimilar

biological product user fees in future fiscal years. Following an initial consultation with public stakeholders and discussions with the regulated industry, the Federal Food, Drug, and Cosmetic Act (the FD&C Act) directs FDA to publish the recommendations for the reauthorized program in the **Federal Register**, hold a meeting at which the public may present its views on such recommendations, and provide for a period of 30 days for the public to provide written comments on such recommendations. FDA will then consider the public views and comments and revise the recommendations as necessary.

DATES: The public meeting will be held on October 20, 2016, from 9 a.m. to 2 p.m. Please register for the meeting by October 19, 2016, at *http://bsufapublicmeeting.eventbrite.com.* Submit electronic or written comments to the public docket by October 19, 2016.

ADDRESSES: The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503, Section A), Silver Spring, MD 20993–0002. Participants must enter through Building 1 and undergo security screening. For more information on parking and security procedures, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–N–3326 for "Biosimilar User Fee Act; Public Meeting." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FDA will post the agenda approximately 5 days before the meeting at: *http://www.fda.gov/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/ucm461774.htm.*

FOR FURTHER INFORMATION CONTACT: Amanda Roache, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1176, Silver Spring, MD 20993, 301–796–4548, FAX: 301–847–8443, *amanda.roache@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is announcing a public meeting to discuss proposed recommendations for the reauthorization of BsUFA, the legislation that authorizes FDA to collect user fees and use them for the process for the review of biosimilar biological product applications. The current authorization of the program (BsUFA I) expires in September 2017. Without new legislation, FDA will no longer be able to collect user fees for future fiscal years to fund the process for the review of biosimilar biological product applications. Section 744I(e)(2) of the FD&C Act (21 U.S.C. 379j–53(e)(2)) requires that after FDA holds negotiations with regulated industry, we do the following: (1) Present recommendations to the relevant Congressional committees, (2) publish recommendations in the **Federal Register**, (3) provide a period of 30 days for the public to provide written comments on the recommendations, (4) hold a meeting at which the public may present its views on the recommendations, and (5) after consideration of public views and comments, revise the recommendations as necessary.

This notice, the 30-day comment period, and the public meeting will satisfy some of these requirements.

The purpose of the meeting is to hear the public's views on the proposed recommendations for the reauthorization of BsUFA II. The following information is provided to help potential meeting participants better understand the history and evolution of the BsUFA program and the proposed BsUFA II recommendations.

II. What is BsUFA and what does it do?

BsUFA is a law that authorizes FDA to collect fees from drug companies that submit marketing applications for certain biosimilar biological products. BsUFA was originally enacted in 2012 as the Biosimilar User Fee Act (Pub. L. 112–144) for a period of 5 years.

BsUFA's intent is to provide additional revenues so that FDA can hire more staff, improve systems, and establish a better-managed biosimilar biological product review process to make important therapies available to patients sooner without compromising review quality or FDA's high standards for safety, efficacy, and quality. As part of FDA's agreement with industry during each reauthorization, the Agency agrees to certain performance goals. These goals apply to the process for the review of new biosimilar biological product applications, resubmissions of original applications, and new and resubmitted supplements to approved applications. Phased in over the 5 years of BsUFA I, the goals were to review and act on 90 percent of original biosimilar biological product application submissions within 10 months of receipt and resubmitted original biosimilar biological product applications within 6 months of receipt; to review and act on 90 percent of original supplements with clinical data within 10 months of receipt and resubmitted supplements with clinical data within 6 months of receipt; and review and act on 90 percent of manufacturing supplements within 6 months of receipt.

III. Proposed BsUFA II Recommendations

In preparing the proposed recommendations to Congress for BsUFA reauthorization, FDA conducted discussions with the regulated industry and consulted with stakeholders, as required by the law. We began the BsUFA reauthorization process by publishing a notice in the **Federal Register** requesting public input on the reauthorization and announcing a public meeting that was held on December 18, 2015. The meeting included presentations by FDA and a series of panels with representatives of different stakeholder groups, including patient advocates, consumer groups, regulated industry, health professionals, and academic researchers. The materials from the meeting, including a transcript and Webcast recording, can be found at *http://www.fda.gov/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/ucm461774.htm.*

Following the December 2015 public meeting, FDA conducted negotiations with the regulated industry from March 2016 through May 2016. FDA posted minutes of these meetings on its Web site at *http://www.fda.gov/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/ucm461774.htm.*

The proposed enhancements for BsUFA II address many of the top priorities identified by public stakeholders, the regulated industry, and FDA. While some of the proposed enhancements are new, many either build on successful enhancements or refine elements from the existing program. The enhancements are proposed in the following areas: Review performance, meeting management, guidance development, and administrative areas (hiring and financial management). The full text of the proposed BsUFA II commitment letter can be found here at *http://www.fda.gov/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/ucm461774.htm.* Each significant new or modified enhancement is described briefly in sections III.A through III.K.

A. The Review Cycle

FDA and the regulated industry jointly identified an opportunity to reduce multiple review cycles for biosimilar biological products by increasing transparency and communication during the review process of a 351(k) application. For BsUFA II, it is therefore proposed to establish a model for the review of biosimilar biological products similar to the Program for Enhanced Review Transparency and Communication for New Molecular Entity New Drug Applications and original Biologics License Applications (the Program) that was established in the fifth authorization of the Prescription Drug User Fee Act (PDUFA).

The Program was first established for PDUFA in 2012. An interim assessment of the Program suggested that it has created conditions that enhance the ability of applicants and FDA reviewers to work toward application approval in the first cycle (see *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm327030.htm*). Likewise, it is anticipated that the review model will promote efficiency and effectiveness of the first cycle review process and minimize the number of review cycles necessary for approval for 351(k) applications.

The Program will allow for additional communication between FDA review teams and the applicants of biosimilar biological products in the form of pre-submission meetings, mid-cycle communications, and late-cycle meetings, while also adding 60 days to the review timeframe to accommodate this additional interaction.

This enhancement is described in section I.B. of the proposed BsUFA II commitment letter.

B. Review Goal Extension for Missing Manufacturing Facilities

When manufacturing facilities are not adequately identified, this may result in the need for FDA to conduct inspections late in the review process. This can adversely impact FDA's ability to complete application review within the performance goal timeframes. Accordingly, FDA proposes to extend the goal date for an original application or a supplement when FDA identifies a need to inspect a facility that was not included in a comprehensive and readily located list of manufacturing facilities. This enhancement is described in section I.A.5.b of the proposed BsUFA II commitment letter.

C. Special Protocol Assessment and Agreement

Further clarity is needed regarding the types of clinical study protocols that may qualify for a Special Protocol Assessment and Agreement under BsUFA. Pharmacokinetic (PK) and Pharmacodynamic (PD) similarity studies should be added to the examples provided in the goals letter. It is proposed that the language in the goals is revised to include PK and PD similarity studies. This enhancement is described in section I.H.1.c of the proposed BsUFA II commitment letter.

D. Prior Approval Manufacturing Supplements

The review goal date for biosimilar prior approval manufacturing supplements is currently 6 months under BsUFA I, compared to 4 months for stand-alone biologics under PDUFA. Therefore, to increase consistency among user fee programs, it is proposed that prior approval manufacturing supplements are reviewed in 4 months, instead of 6 months, with a phased-in performance goal. The language for prior approval supplements is included in section I.A.3 of the proposed BsUFA II commitment letter.

E. Meeting Management

The enhancements in this section focus on FDA's ability to better manage meetings with sponsors of 351(k) applications. The details for these enhancements can be found in section

I.I of the proposed BsUFA II commitment letter.

1. Addition of a Written Response Meeting Format for Biosimilar Initial Advisory (BIA) and Biosimilar Program Development (BPD) Type 2 Meetings

Currently, there is no mechanism to grant a meeting request and provide a written response in place of a face-to-face meeting, videoconference, or teleconference. From FY 2013 to FY2015, FDA provided written responses to sponsors for 16 out of 22 meetings that were denied or cancelled due to incomplete, premature, or unnecessary requests in order to support biosimilar development programs. Such responses are not on a user fee clock and are not tracked work. For BsUFA II, it is proposed that for BIA and BPD Type 2 meetings, the sponsor may request a written response to questions rather than a face-to-face meeting, videoconference, or teleconference. If a written response is deemed appropriate, FDA will notify the requester of the date it intends to send the written response. This date will be consistent with the timeframes specified for the specific meeting type.

2. Increase the Scheduling Timeframe for BPD Type 2 Meetings

The FDA has had challenges scheduling BPD type 2 meetings within the 75-day timeframe. Scheduling challenges occur due to an increasing number of Type 2 meetings to discuss novel and complex aspects of development that require extensive internal discussion. A review committee must address many of these aspects to ensure implementation of consistent scientific advice and policy concerning biosimilar development. Consequently, FDA is unable to answer and provide comprehensive responses to such questions at meetings within the 75-day timeframe. This results in unresolved issues and additional followup questions that ultimately leads to a delay in a sponsor's overall development program. To provide the necessary time for FDA discussions and to develop comprehensive responses, it is proposed that BPD Type 2 Meetings occur within 90 calendar days, instead of 75 days, from receipt of the meeting request and meeting package with a phased in performance goal. Additionally, it is proposed that the Agency will send preliminary responses to the sponsor's questions contained in the background package no later than five calendar days before the face-to-face videoconference or teleconference meeting date for BPD Type 2 and Type 3 meetings.

3. Reduce the Scheduling Timeframe for Biosimilar Initial Advisory (BIA) Meetings

On average, five BIA meetings were scheduled per fiscal year from 2013 to 2015. The content of a BIA meeting is limited to a general discussion on whether a proposed product could be developed as a biosimilar product and to provide high-level advice on the expected content of the development program. Targeted advice on the adequacy of any comparative data or extensive advice for any aspect of an ongoing biosimilar development program is not expected to be provided in a BIA meeting. The current 90-day scheduling timeframe may no longer be appropriate and should be shortened. Therefore, it is proposed for BIA meetings to occur within 75 calendar days, instead of 90 days, from receipt of the meeting request and meeting package.

F. Guidance Development

FDA has received feedback that additional clarity is needed on regulatory processes and the scientific criteria for biosimilar development and approval to provide certainty to industry and other stakeholders related to Agency expectations. Therefore, it is proposed that FDA revise its guidance entitled "Formal Meetings Between the FDA and Biosimilar Biological Product Sponsors or Applicants" and update the draft guidance entitled "Best Practices for Communication Between IND Sponsors and FDA During Drug Development" to include communications between IND sponsors and FDA during biosimilar biological product development. Additionally, it is proposed that FDA publish draft or final guidance on several issues related to biosimilar biological product development including considerations in demonstrating interchangeability with a reference product; statistical considerations for analytic similarity for biosimilar biological products; processes and further considerations related to post-approval manufacturing changes for biosimilar biological products; clinical pharmacology data to support a demonstration of biosimilarity to a reference product; nonproprietary naming of biological products; and labeling for biosimilar biological products. The proposed goals related to guidance development are described in sections I.I.6 and II of the proposed BsUFA II commitment letter.

G. Improving FDA Hiring and Retention of Review Staff

To speed and improve development of safe and effective biosimilar biological products for patients, FDA must hire and retain sufficient numbers and types of technical and scientific experts to efficiently conduct reviews of 351(k) applications. In order to strengthen this core function during BsUFA II, FDA proposes to implement a full time equivalent staff-based position management system capability and an online position classification system. In addition, FDA will complete implementation of corporate recruiting practices, augment hiring capacity with expert contractor support, establish a dedicated function for staffing of the human drug review program, establish clear goals for biosimilar review program hiring, and conduct comprehensive and continuous assessments of hiring and retention performance. These enhancements are described in section V of the proposed BsUFA II commitment letter.

H. Enhancing Capacity for Biosimilar Guidance Development, Reviewer Training, and Timely Communication

In order to accelerate patient access to safe and effective biosimilar biological products and ensure accuracy, consistency, and timeliness FDA needs a more focused and better resourced capacity to coordinate key legal, scientific, review, and outreach functions in FDA's development phase advice and premarket review. It is proposed that FDA strengthen its staff capacity to: (1) Develop new regulations and guidance to clarify scientific criteria for biosimilar development and approval, and to provide certainty to industry and other stakeholders on key regulatory issues including the scope of eligible biosimilar biological products; (2) develop or revise manuals of policy and procedures, standard operating procedures, and review templates to facilitate rapid update and application of new policies and guidance by review staff, and to develop and deliver timely, comprehensive training to all Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research review staff and special government employees involved in the review of 351(k) BLAs; (3) deliver timely information to the public to improve public understanding of biosimilarity and interchangeability; and (4) deliver information concerning the date of first licensure and the reference product exclusivity expiry date, to be included in the Purple

Book.[1] The language for enhanced capacity is included in section III of the proposed BsUFA II commitment letter.

I. Enhancing Management of User Fee Resources

FDA is committed to enhancing management of BsUFA resources and ensuring BsUFA user fee resources are administered, allocated, and reported in an efficient and transparent manner. In BsUFA II, FDA proposes to establish a resource capacity planning function to improve its ability to analyze current resource needs and project future resource needs, to modernize its time reporting approach, to conduct an evaluation of BsUFA program resource management, to publish a 5-year BsUFA financial plan with annual updates, and to convene an annual public meeting, beginning in FY 2019, to discuss the financial plan and progress towards the financial management enhancements. FDA also proposes to reduce the carryover balance to no greater than 21 weeks of the FY 2022 target revenue by the end of FY 2022. These enhancements are described in section IV of the proposed BsUFA II commitment letter.

J. Enhancements to Fee Structure and Related Mechanisms for Increased Predictability, Stability, and Efficiency

The current BsUFA fee structure references PDUFA fees each fiscal year and calculates biosimilar biological product development program (BPD) fees based on the PDUFA application fee. FDA and industry agreed that the BsUFA II fee structure and the fee setting process could be updated to enhance the predictability and stability of fee amounts and revenues in a manner to improve FDA's ability to engage in long-term financial planning. To address these issues, FDA proposes to discontinue the reduction of the biosimilar biological product application fee by the cumulative BPD fees paid by sponsors, to discontinue the establishment and supplement fees, to rename the product fee as the BsUFA Program fee, to modify the Program fee billing date to minimize the need for multiple billing cycles, and to add a limitation that a sponsor shall not be assessed more than five BsUFA Program fees for a fiscal year for products identified in each distinct approved biosimilar biological product application held by that sponsor.

K. Enhancements to User Fee Revenue Amounts and Adjustments

FDA and industry agreed that the BsUFA II user fee revenue amounts and fee amounts should be independent of PDUFA and based on BsUFA program costs. FDA proposes to establish fees to generate a total of $45 million in user fee revenue for FY 2018. However, FDA also proposes that it can adjust this amount when setting the user fee amounts published in the FY 2018 **Federal Register** notice to reflect an updated assessment of the BsUFA workload, with the limitation that this adjustment cannot increase user fee revenue by more than $9 million (*i.e.* relative to the $45 million specified for FY 2018 user fee revenue). To enhance the predictability of user fee amounts, FDA proposes that the amount for each BsUFA fee cannot increase more than 25 percent from the respective FY2018 fee amount until the capacity planning adjustment is effective and that FDA can otherwise modify the amount of the user fee revenue generated from each fee type each fiscal year. FDA proposes to adjust the annual user fee revenue amount for inflation, to develop a robust methodology for adjusting fees based on the capacity needs of the program, and to introduce an annual operating reserve adjustment to provide for adequate carryover resources.

IV. Purpose and Scope of the Meeting

If you wish to attend this meeting, visit *http://bsufapublicmeeting.eventbrite.com.* Please register by October 19, 2016. If you are unable to attend the meeting in person, you can register to view a live Webcast of the meeting. You will be asked to indicate in your registration if you plan to attend in person or via the Webcast. Seating will be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability. If you need special accommodations because of a disability, please contact Amanda Roache (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

The meeting will include a presentation by FDA and a series of invited panels representing different stakeholder groups identified in the statute (such as patient advocacy groups, consumer advocacy groups, health professionals, and regulated industry). We will also provide an opportunity for other organizations and individuals to make presentations at the meeting or to submit written comments to the docket before the meeting.

FDA will also hold an open public comment period at the meeting to give the public an opportunity to present their comments. Registration for open public comment will occur at the registration desk on the day of the meeting and workshop on a first-come, first-served basis.

Transcripts: As soon as a transcript is available, FDA will post it at *http://www.fda.gov/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/ucm461774.htm.*

Dated: September 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22442 Filed 9–16–16; 8:45 am]

BILLING CODE 4164–01–P

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[1] The "Purple Book" lists biological products, including any interchangeable biological products, licensed by FDA under the Public Health Service Act.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2673]

Progress Toward Implementing the Product Identification Requirements of the Drug Supply Chain Security Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "Progress Toward Implementing the Product Identification Requirements of the Drug Supply Chain Security Act." This public meeting is intended to provide members of the pharmaceutical distribution supply chain and other interested stakeholders an opportunity to share information with FDA about the efforts underway to implement the Drug Supply Chain Security Act's (DSCSA's) product identification requirements, including the use of product identifiers to enhance tracing at the product level.

DATES: The public meeting will be held on October 14, 2016, from 9 a.m. to 4 p.m. To permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public meeting topics. The deadline for submitting comments related to this public meeting is November 14, 2016.

ADDRESSES: The public meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503A), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–2673 for "Progress Toward Implementing the Product Identification Requirements of the Drug Supply Chain Security Act." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Daniel Bellingham, Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4285, Silver Spring, MD 20993, 301–796–3130, FAX: 301–847–8722, email: *CDERODSIRPublicMeetings@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 27, 2013, the DSCSA (Title II, Pub. L. 113–54) was signed into law. The DSCSA outlines critical steps to build an electronic, interoperable system by 2023 to identify and trace certain prescription drugs as they are distributed within the United States. This system will enhance FDA's ability to protect U.S. consumers from exposure to drugs that may be counterfeit, stolen, contaminated, or otherwise harmful by improving the detection and removal of potentially dangerous drugs from the drug supply chain.

Section 582(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360eee–1), which was added by the DSCSA, directs FDA to hold at least five public meetings to enhance the safety and security of the pharmaceutical distribution supply chain and provide opportunities for comment from stakeholders. In carrying out these public meetings, FDA is required to prioritize topics necessary to inform the guidances described in section 582(h)(3) and (h)(4) related to unit-level tracing and standards for the interoperable data exchanges, respectively, and to take all reasonable and practicable measures to ensure the protection of confidential commercial information and trade secrets. FDA is also required to address each of the eight topics enumerated in section 582(i)(2) in at least one of the five required public meetings.

FDA will hold a public meeting on October 14, 2016, to provide members of the pharmaceutical distribution supply chain and other interested stakeholders an opportunity to share information about current practices and industry efforts to implement the DSCSA's product identification requirements, including the use of product identifiers. The format of the meeting involves presentations from the public and followup questions from an FDA panel. FDA will not be inviting specific presenters; rather, with this notice, FDA is soliciting presentations from interested stakeholders.

II. Topics for This Public Meeting

The main topic FDA is interested in discussing at the public meeting is the supply chain's progress toward implementing the DSCSA's product identification requirements, including best practices in each sector of the pharmaceutical distribution supply chain to conduct product tracing, verification, and product identification. This may include the processes needed to utilize the product identifiers to enhance tracing of product at the package level, including allowing for verification, aggregation, and inference, as necessary. (The product identifier is a standardized graphic that includes, in both human- and machine-readable forms, the National Drug Code, serial number, lot number, and expiration date of the product.) Under section 582(b)(2) and (e)(2) of the FD&C Act, manufacturers and repackagers must affix or imprint a product identifier to each package and homogenous case of a product intended to be introduced in a transaction into commerce, by November 2017 and November 2018, respectively.

Other topics of interest to FDA that may be presented at the public meeting include, but are not limited to:

- An assessment of the steps taken by supply chain members to build capacity for a unit-level system for electronic product tracing, including the impact on (1) the ability of the health care system to maintain patient access to medicines; (2) the scalability of such requirements, including as it relates to product lines; and (3) the capability of different sectors and subsectors, including both large and small businesses, to affix and utilize the product identifier; and
- information related to the secure, interoperable electronic data exchange among sectors within the pharmaceutical distribution supply chain.

FDA will post the agenda of the meeting at *http://www.fda.gov/Drugs/NewsEvents/ucm519587.htm.*

III. Registration

Registration to attend is free and will be on a first-come, first-served basis. To register for the meeting either: (1) Email your registration information to *CDERODSIRPublicMeetings@fda.hhs.gov,* or (2) mail your registration information to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Registration information should include:

- "Registration for October 14, 2016, DSCSA meeting" in the subject line, and
- Registrant name, company or organization, address, phone number, and email address in the body of your email or mailing.

Registration requests should be received by October 6, 2016. Onsite registration on the day of the meeting, starting at 8 a.m., will be based on space availability. Seating will be limited; therefore, if registration meets the maximum capacity, FDA will post a notice closing meeting registration for the meeting on FDA's Web site at: *http://www.fda.gov/Drugs/NewsEvents/ucm519587.htm.*

If you need special accommodations due to a disability, please contact Daniel Bellingham (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the public meeting.

IV. Requests for Oral Presentations

Any person interested in presenting at the public meeting should include a request to present in a single email with a registration request (see section III. Registration). The request should specify the topic(s) that will be addressed in the presentation. FDA will do its best to accommodate requests for oral presentations. Individuals and organizations with common interests are encouraged to consolidate or coordinate their presentations and can submit a single request to present.

All requests to make oral presentations must be received by October 5, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled public comment session, FDA may conduct a lottery to determine the speakers for the public comment session. The contact person will notify interested persons regarding their request to speak by October 7, 2016. Presenters must email their presentation materials, if any, to *CDERODSIRPublicMeetings@fda.hhs.gov* no later than October 12, 2016. This meeting is not intended to be a venue for circulation of product-specific promotional material, but rather an opportunity to gather information related to stakeholder progress towards implementing the product identification requirements of the DSCSA.

V. Webcasting of the Public Meeting

Portions of this public meeting will be recorded and Webcast on the day of the meeting. Information for how to access the Webcast will be available at *http://www.fda.gov/Drugs/NewsEvents/ucm519587.htm* by October 14, 2016. The Webcast will be conducted in listening mode only.

Dated: September 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22441 Filed 9–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2610]

A List of Biomarkers Used as Outcomes in Development of FDA-Approved New Molecular Entities and New Biological Therapeutics (October 2007 to December 2015); Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the establishment of a docket to receive suggestions, recommendations, and comments from interested parties (such as academic researchers, regulated industries, consortia, and patient groups) on a list of biomarkers that were used as outcomes to develop FDA-approved new molecular entities (NMEs) and New Biological Therapeutics from October 2007 to December 2015. Comments received on this list will help FDA determine the utility of the list and may assist FDA in developing databases on biomarkers for drug development in the future.

DATES: Submit either electronic or written comments by November 18, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you

do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–2610 for "A List of Biomarkers Used as Outcomes in Development of FDA-Approved New Molecular Entities and New Biological Therapeutics (October 2007 to December 2015); Establishment of Public Docket." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Marianne Noone, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, Rm. 4528, Silver Spring, MD 20993–0002, 301–796–2600.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is committed to support more efficient drug development by providing scientific, technical, and regulatory advice to stakeholders (such as to pharmaceutical industries, academia, patient advocacy groups, and consortia). As part of this commitment, FDA is providing a list of biomarkers that were used as outcomes in the development of FDA-approved NMEs and New Biological Therapeutics in different disease areas from October 2007 to December 2015. This list is intended to provide examples of biomarkers that were accepted and used as endpoints in clinical trials for drug and biologic approvals from October 2007 to December 2015. This list, along with brief background information, is accessible at Biomarkers Used as Outcomes in Development of FDA-Approved Therapeutics (October 2007 to December 2015).

II. Establishment of a Public Docket and Request for Comments

FDA is soliciting suggestions and comments from stakeholders to determine the utility of the biomarker outcomes list and to identify any areas of improvement for disseminating information on biomarkers that have been used to support the approval of drugs or biologics. Specifically, FDA welcomes comments regarding the following two areas:

- Areas of improvement for communicating and disseminating information about biomarkers and their utility as drug development tools.
- The best approach for updating the biomarkers outcomes list, including any modifications of the list, in the future.

FDA will consider all comments submitted but will generally not respond directly to the person or organization submitting the comment.

Dated: September 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22470 Filed 9–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–2569]

S9 Nonclinical Evaluation for Anticancer Pharmaceuticals—Questions and Answers; International Council for Harmonisation; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance entitled "S9 Nonclinical Evaluation for Anticancer Pharmaceuticals—Questions and Answers." The draft questions and answers (Q&As) guidance was prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. The draft Q&As guidance provides recommendations for nonclinical studies for the development of pharmaceuticals, including both small molecule and biotechnology-derived products, intended to treat patients with cancer. The Q&As are intended to provide additional clarity for topics discussed in the ICH guidance entitled "S9 Nonclinical Evaluation for Anticancer Pharmaceuticals" (S9 guidance).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 18, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–2569 for "S9 Nonclinical Evaluation for Anticancer Pharmaceuticals—Questions and Answers; International Council for Harmonisation; Draft Guidance for Industry; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration (CDER), 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance:* John K. Leighton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2204, Silver Spring, MD 20993–0002, 301–796–1398; or Anne M. Pilaro, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 4025, Silver Spring, MD 20993–0002, 240–402–8341.

Regarding the ICH: Amanda Roache, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1176, Silver Spring, MD 20993–0002, 301–796–4548.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products for human use among regulators around the world. The six founding members of the ICH are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; CDER and CBER, FDA; and the Pharmaceutical Research and Manufacturers of America. The Standing Members of the ICH Association include Health Canada and Swissmedic. Any party eligible as a Member in accordance with the ICH Articles of Association can apply for membership in writing to the ICH Secretariat. The ICH Secretariat, which coordinates the preparation of documentation, operates as an international nonprofit organization and is funded by the Members of the ICH Association.

The ICH Assembly is the overarching body of the Association and includes representatives from each of the ICH members and observers.

In the **Federal Register** of March 8, 2010 (75 FR 10487), FDA announced the availability of the S9 guidance, and that guidance was a significant advance in promoting anticancer drug development. Since the S9 guidance was issued, some parties have experienced challenges implementing the nonclinical recommendations for developing anticancer pharmaceuticals outlined in that guidance. In June 2016, the ICH Assembly endorsed the current draft Q&As guidance entitled "S9 Nonclinical Evaluation for Anticancer Pharmaceuticals—Questions and Answers" and agreed that the draft Q&As guidance should be made available for public comment. The draft Q&As guidance is the product of the Safety Implementation Working Group (IWG) of the ICH. Comments about this draft will be considered by FDA and the Safety IWG.

The draft Q&As guidance provides guidance on implementing the S9 guidance. The Q&As were developed by the IWG to provide additional clarity for the nonclinical development of anticancer pharmaceuticals. Topics addressed in the draft Q&As guidance include the patient population covered by the S9 guidance, recovery groups in nonclinical studies, development of antibody-drug conjugates, juvenile animal studies, and the need for long-term toxicity studies when pharmaceutical development moves to patients with earlier stage diseases.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "S9 Nonclinical Evaluation for Anticancer Pharmaceuticals—Questions and Answers." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: September 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22375 Filed 9–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–2489]

Receipt of Notice That a Patent Infringement Complaint Was Filed Against a Biosimilar Applicant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing notice that an applicant for a proposed biosimilar product notified FDA that a patent infringement action was filed in connection with the applicant's biologics license application (BLA). Under the Public Health Service Act (PHS Act), an applicant for a proposed biosimilar product or interchangeable product must notify FDA within 30 days after the applicant was served with a complaint in a patent infringement action described under the PHS Act. FDA is required to publish notice of the complaint in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Daniel Orr, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6208, Silver Spring, MD 20993–0002, 240–402–0979, *daniel.orr@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Biologics Price Competition and Innovation Act of 2009 (BPCI Act) was enacted as part of the Patient Protection and Affordable Care Act (Pub. L. 111–148) on March 23, 2010. The BPCI Act amended the PHS Act and created an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed biological reference product. Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, describes the requirements for a BLA for a proposed biosimilar product or a proposed interchangeable product (351(k) BLA). Section 351(*l*) of the PHS Act, also added by the BPCI Act, describes certain procedures for exchanging patent information and resolving patent disputes between a 351(k) BLA applicant and the holder of the BLA reference product. If a 351(k) applicant is served with a complaint for a patent infringement described in section 351(*l*)(6) of the PHS Act, the applicant is required, under section 351(*l*)(6)(C) of the PHS Act, to provide the FDA with notice and a copy of the complaint within 30 days of service. FDA is required to publish notice of a complaint received under section 351(*l*)(6)(C) of the PHS Act in the **Federal Register**.

FDA has received notice of the following complaint under section 351(*l*)(6)(C) of the PHS Act: *Amgen* v. *Sandoz,* 3:16–cv–02581 (N.D. Cal., filed May 12, 2015).

FDA has only a ministerial role in publishing notice of a complaint received under section 351(*l*)(6)(C) of the PHS Act, and does not perform a substantive review of the complaint.

Dated: September 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22376 Filed 9–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; International Center of Excellence for Malaria Research.

Date: October 13–14, 2016.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3G13B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Rockville, MD 20892–7616, (240) 669–5048, *yong.gao@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 13, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22391 Filed 9–16–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: October 27, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6710 B Rockledge Drive, Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Population Sciences Subcommittee.

Date: November 3, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carla T. Walls, Ph.D., Scientific Review Administratior, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6710 B Rockledge Drive, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 4, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carla T. Walls, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6710 B Rockledge Drive, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 13, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22394 Filed 9–16–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Global Infectious Disease Research Administration Development Award for Low-and Middle-Income Country Institutions (G11).

Date: October 11, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: B. Duane Price, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, RM 3G50, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, 240–669–5074, *pricebd@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 13, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22389 Filed 9–16–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Rapid Assessment of Zika Virus (ZIKV) Complications (R21).

Date: October 13–14, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G62A, National Institute of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20899823, (240) 669–5081, *ecohen@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 13, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22392 Filed 9–16–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; National Institute of Neurological Disorders and Stroke Federal Interagency Traumatic Brain Injury Research (FITBIR) Data Access Request

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 8, 2016, page 44644 (81 FR 44644) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Sophia Jeon, Health Science Policy Analyst, Office of Science Policy and Planning (OSPP), NINDS, NIH, 31 Center Drive, Building 31, Room 8A03, Bethesda, MD 20892, or call non-toll-free number (301) 435–7571, or Email your request, including your address to: *sophia.jeon@nih.gov*

SUPPLEMENTARY INFORMATION: The National Institute of Neurological Disorders and Stroke (NINDS), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: National Institute of Neurological Disorders and Stroke Federal Interagency Traumatic Brain Injury Research (FITBIR) Data Access Request, 0925–0677, Expiration Date 08/31/2016—REINSTATEMENT with change, National Institute of Neurological Disorders and Stroke (NINDS), National Institutes of Health (NIH).

Need and Use of Information Collection: The FITBIR Informatics System Data Access Request form is necessary for "Recipient" Principal Investigators and their organization or corporations with approved assurance from the DHHS Office of Human Research Protections to access data or images from the FITBIR Informatics System for research purposes. The primary use of this information is to document, track, monitor, and evaluate the use of the FITBIR datasets, as well as to notify interested recipients of updates, corrections or other changes to the database. Type of respondents affected by this information collection are researchers, such as Principal Investigators (PI), who are interested in obtaining access to study data and images from the FITBIR Informatics System for research purposes.

There are two scenarios for completing the form. The first is where the Principal Investigator (PI) completes the entire FITBIR Informatics System Data Access Request form, and the second where the PI has the Research Assistant begins filling out the form and PI provides the final reviews and signs it. Burden for this collection of information is estimated to vary from 30–95 minutes per response. The estimated annual burden hours to complete the data request form are listed below.

OMB approval reinstatement is requested for 3 years. The total estimated annualized burden hours are 63.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
FITBIR Informatics System Data Access Request.	Individuals (Principal Investigators)	40	1	95/60	63

Dated: September 12, 2016.

Paul Scott,

Project Clearance Liaison Officer, National Institute of Neurological Disorders and Stroke, NIH.

[FR Doc. 2016–22561 Filed 9–16–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, October 18, 2016, 02:00 p.m. to October 18, 2016, 04:00 p.m., National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 08, 2016, 18 FR 62158.

The meeting date has changed from October 18, 2016, 2:00 p.m. to 4:00 p.m. to October 26, 2016, 2:00 p.m. to 4:00 p.m. The meeting is closed to the public.

Dated: September 13, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22393 Filed 9–16–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Project: Uniform Application for the Community Mental Health Services Block Grant and Substance Abuse and Prevention Treatment Block Grant FY 2016–2017 Application Guidance and Instructions (OMB No. 0930–0168)—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting an approval from the Office of Management and Budget (OMB) for an amendment to the FY 2016–2017 Uniform Application, Section III. Behavioral Health Assessment and Plan, C. Environmental Factors and Plan. The intent of this amendment is to gather information regarding the states' and jurisdictions' plans to implement elements of a syringe services program at 1 or more community-based organizations that receive amounts from the grant to provide substance use disorder treatment and recovery services to persons who inject drugs. In response to the emergence of prescription drug and heroin overdoses and associated deaths in many states and jurisdictions, SAMHSA issued guidance on April 2, 2014, to the states and jurisdictions regarding the use of SABG funds for prevention education and training regarding overdoses and the purchase of naloxone (Narcan®) and related materials to assemble overdose prevention kits.

Respondents are the 50 states and the jurisdictions (District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Commonwealth of Northern Mariana Islands, Federated States of Micronesia, Guam, Republic of Marshall Islands, Republic of Palau, and the Red Lake Band of Chippewa Indians of Minnesota).

The following reporting burden is based on estimates developed considering the State substance abuse and mental health authorities responsible for these activities and represents the average total hours to assemble, format, and produce the requested information.

Respondents	Number of respondents	Response per respondent	Total responses	Total burden	Hourly wage cost	Total hour cost
States and Jurisdictions	60	1	60	40 hours per State (1500 hours).	$45.00	$1800 per state/jurisdiction ($108,000 Total).

Link for the application, Guidance, and Amendment: *http://www.samhsa.gov/grants/block-grants/*.

Send comments to CAPT Gilbert Rose, SAMHSA SABG Team Lead, at *SABG-SSP@samhsa.hhs.gov*. Comments should be received by November 18, 2016.

This notice supersedes the Notice dated September 7, 2016.

Summer King,

Statistician.

[FR Doc. 2016–22467 Filed 9–16–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1621]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On June 13, 2016, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 81 FR 38199. The table provided here represents the proposed flood hazard determinations and communities affected for Humboldt County, Iowa and Incorporated Areas.

DATES: Comments are to be submitted on or before December 19, 2016.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1621, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400

C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 81 FR 38199 in the June 13, 2016, issue of the **Federal Register**, FEMA published a table titled "Humboldt County, Iowa, and Incorporated Areas". This table contained inaccurate information as to the date for the Preliminary FIRM and FIS report featured in the table.

In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 18, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Humboldt County, Iowa and Incorporated Areas	
Maps available for inspection online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project 15–07–0903S Preliminary Date: July 31, 2015	
City of Bradgate	City Hall, 202 South Garfield Street, Bradgate, IA 50520.
City of Dakota City	City Hall, 26 5th Street South, Dakota City, IA 50529.
City of Humboldt	City Hall, 29 5th Street South, Humboldt, IA 50548.
City of Livermore	City Hall, 401 4th Avenue, Livermore, IA 50558.
City of Lu Verne	City Hall, 109 Dewitt Street, Lu Verne, IA 50560.
City of Rutland	City Hall, 201 Sheridan Avenue, Rutland, IA 50582.
City of Thor	City Hall, 223 North Ann Street, Thor, IA 50591.
Unincorporated Areas of Humboldt County	Humboldt County Courthouse, 203 Main Street, Dakota City, IA 50529.

[FR Doc. 2016–22476 Filed 9–16–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4277–DR; Docket ID FEMA–2016–0001]

Louisiana; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–4277–DR), dated August 14, 2016, and related determinations.

DATES: *Effective Date:* September 8, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 8, 2016, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), in a letter to W. Craig Fugate, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

> I have determined that the damage in certain areas of the State of Louisiana resulting from severe storms and flooding during the period of August 11–31, 2016, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act").
>
> Therefore, I amend my declaration of August 14, 2016, to authorize Federal funds for all categories of Public Assistance at 90 percent of total eligible costs.

This adjustment to State and local cost sharing applies only to Public Assistance costs including direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (section 408), and the Hazard Mitigation Grant Program (section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households, 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–22495 Filed 9–16–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1648]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before December 19, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1648, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 26, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Non-Watershed-Based Studies

Community	Community map repository address
Sierra County, California and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–09–1829S Preliminary Date: August 19, 2015	
Unincorporated Areas of Sierra County	Sierra County Department of Planning, 101 Courthouse Square, Downieville, CA 95936.
Jasper County, Indiana and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–05–1545S Preliminary Date: April 12, 2016	
City of Rensselaer	City Hall, Building Department,124 South Van Rensselaer Street, Rensselaer, IN 47978.
Town of DeMotte	Town Hall, 112 Carnation Street SE, DeMotte, IN 46310.
Town of Remington	Town Hall, 24 South Indiana Street, Remington, IN 47977.
Town of Wheatfield	Town Hall, 170 South Grace Street, Wheatfield, IN 46392.
Unincorporated Areas of Jasper County	Jasper County Planning and Development, Jasper County Courthouse, 115 West Washington Street, Suite 109, Rensselaer, IN 47978.

[FR Doc. 2016–22474 Filed 9–16–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1630]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On July 13, 2016, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 81 FR 45295. The table provided here represents the proposed flood hazard determinations and communities affected for Maricopa County, Arizona and Incorporated Areas.

DATES: Comments are to be submitted on or before December 19, 2016.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1630, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 81 FR 45295 in the July 13, 2016, issue of the

Federal Register, FEMA published a table titled Maricopa County, Arizona and Incorporated Areas. This table contained inaccurate information as to the date for the Preliminary FIRM and FIS report featured in the table.

In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 18, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Maricopa County, Arizona and Incorporated Areas	
Maps Available for Inspection online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 11–09–0876S Preliminary Date: February 26, 2016	
City of Avondale	Development and Engineering Services Department, 11465 West Civic Center Drive, Avondale, AZ 85323.
City of El Mirage	City Hall, 12145 Northwest Grand Avenue, El Mirage, AZ 85335.
City of Glendale	City Hall, 5850 West Glendale Avenue, Glendale, AZ 85301.
City of Goodyear	Engineering Department, 14455 West Van Buren Street, Suite D–101, Goodyear, AZ 85338.
City of Peoria	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.
City of Phoenix	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.
City of Tempe	Engineering Department, City Hall, 31 East 5th Street, Tempe, AZ 85281.
Unincorporated Areas of Maricopa County	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.

[FR Doc. 2016–22477 Filed 9–16–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1644]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before December 19, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1644, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 18, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Watershed-Based Studies:

Community	Community map repository address
Lower Sabine Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Beauregard Parish, Louisiana and Incorporated Areas	
Town of Merryville	Town Hall, 1009 State Highway 110 West, Merryville, LA 70653.
Unincorporated Areas of Beauregard Parish	Beauregard Parish Department of Public Works, 201 West 2nd Street, DeRidder, LA 70634.

II. Non-watershed-based studies:

Community	Community map repository address
Flagler County, Florida and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 11–04–1996S Preliminary Date: March 15, 2016	
City of Bunnell	City Hall, 201 West Moody Boulevard, Bunnell, FL 32110.
City of Flagler Beach	City Hall, 105 South 2nd Street, Flagler Beach, FL 32136.
City of Palm Coast	City Hall, 160 Lake Avenue, Palm Coast, FL 32164.
Town of Beverly Beach	Town Hall, 2735 North Oceanshore Boulevard, Beverly Beach, FL 32136.
Town of Marineland	Marineland Town Office, 9507 North Oceanshore Boulevard, St. Augustine, FL 32080.
Unincorporated Areas of Flagler County	Flagler County Planning and Zoning Department, 1769 East Moody Boulevard, Building 2, Bunnell, FL 32110.
Noble County, Oklahoma and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–06–1789S Preliminary Date: February 19, 2016	
City of Perry	City Hall, 622 Cedar Street, Perry, OK 73077.
Otoe-Missouria Tribe of Oklahoma	Otoe-Missouria Tribe of Oklahoma Tribal Headquarters, 8151 Highway 177, Red Rock, OK 74651.
Town of Billings	Town Hall, 122 West Main Street, Billings, OK 74630.
Town of Marland	City Hall, 306 North Main Street, Marland, OK 74644.
Town of Red Rock	City Hall, 300 Lillie Street, Red Rock, OK 74651.
Tribe of Ponca Indians of Oklahoma	Tribe of Ponca Indians of Oklahoma Tribal Affairs Building, 20 White Eagle Drive, Ponca City, OK 74601.
Unincorporated Areas of Noble County	Noble County Courthouse, 300 Courthouse Drive #1, Perry, OK 73077.

[FR Doc. 2016–22473 Filed 9–16–16; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1647]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before December 19, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1647, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 26, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Watershed-Based Studies

Community	Community map repository address
Upper Chattahoochee Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Habersham County, Georgia and Incorporated Areas	
City of Baldwin	City Hall, 130 Airport Road, Baldwin, GA 30511.
City of Clarkesville	City Hall, 123 North Laurel Drive, Clarkesville, GA 30523.
City of Cornelia	City Hall, 181 Larkin Street, Cornelia, GA 30531.
City of Demorest	City Hall, 546 Georgia Street, Demorest, GA 30535.

Community	Community map repository address
Town of Alto	Town Hall, 162 South Grant Street, Alto, GA 30510.
Unincorporated Areas of Habersham County	Habersham County Planning and Development Department, 555 Monroe Street, Suite 70, Clarkesville, GA 30523.
White County, Georgia and Incorporated Areas	
City of Cleveland	City Clerk's Office, 85 South Main Street, Cleveland, GA 30528.
City of Helen	City Hall, 25 Alpenrosen Strasse, Helen, GA 30545.
Unincorporated Areas of White County	White County Planning Office, 1241 Helen Highway, Cleveland, GA 30528.

II. Non-watershed-based studies:

Community	Community map repository address
Walton County, Florida and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 11–04–1989S Preliminary Date: March 16, 2016	
City of Freeport	City Hall, 112 State Highway 20 West, Freeport, FL 32439.
Unincorporated Areas of Walton County	Walton County Planning and Development Services Department, 31 Coastal Centre Boulevard, Santa Rosa Beach, FL 32459.

[FR Doc. 2016–22478 Filed 9–16–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0067]

Agency Information Collection Activities: Application for Asylum and for Withholding of Removal, Form I–589; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 18, 2016.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0067 in the subject box, the agency name and Docket ID USCIS–2007–0034. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0034;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha L. Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0034 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–589; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–589 is necessary to determine whether an alien applying for asylum and/or withholding of removal in the United States is classified as refugee, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–589 is approximately 157,372 and the estimated hour burden per response is 12 hours per response; and the estimated number of respondents providing biometrics is 97,152 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,002,132 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $61,689,824.

Dated: September 13, 2016.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–22462 Filed 9–16–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0032]

Agency Information Collection Activities: Application for Waiver of Grounds of Inadmissibility, Form I–690; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on July 1, 2016, at 81 FR 43221, allowing for a 60-day public comment period. USCIS received 1 comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 19, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov*. Comments may also be submitted via fax at (202) 395–5806 (This is not a toll-free number). All submissions received must include the agency name and the OMB Control Number [1615–0032].

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0047 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–690; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS will use this form to determine whether applicants are eligible for admission to the United States under sections 210 and 245A of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: 22 responses (Form I–690) at approximately 3 hours per response; 11 responses (Supplement 1) at approximately 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 88 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,316.50.

Dated: September 14, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–22461 Filed 9–16–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2016–N128]; [FVES59420300000F2 14X FF03E00000]

Draft Environmental Impact Statement; Indiana Department of Natural Resources Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement; notice of scoping meeting; and request for comments.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), we are advising the public that we intend to prepare an environmental impact statement (EIS) on a proposed Endangered Species Act (ESA) incidental take permit (ITP) application from the Indiana Department of Natural Resources (IDNR), Division of Forestry (DoF) for the federally endangered Indiana bat (*Myotis sodalis*). We are also announcing the initiation of a public scoping process to engage Federal, Tribal, State, and local governments; special interest groups; and the public in the identification of issues and concerns, potential impacts, and possible alternatives to the proposed action.

DATES: Public scoping will begin with the publication of this NOI in the **Federal Register** and will continue through October 19, 2016. We will consider all comments on the scope of the EIS analysis that are received or postmarked by this date. Comments received or postmarked after this date will be considered to the extent practicable. We will conduct a public scoping meeting during the scoping period. The scoping meeting will provide the public with an opportunity to ask questions, discuss issues with Service staff regarding the EIS, and provide written comments.

- September 30th, 6:00–9:00 p.m. at the Forestry Training Center on Morgan-Monroe State Forest. Directions: from the Forest Office at 6220 Forest Road, Martinsville, IN (see Google Maps), go 0.2 miles north on Forest Road and take the first road to the left (West), go 0.4 miles and park at 2nd building on the right. The Forestry Training Center is located approx. 6 miles south of Martinsville, IN.

ADDRESSES: Send written comments via U.S. mail to the Field Supervisor, U.S. Fish and Wildlife Service, Bloomington Field Office, 620 South Walker Street, Bloomington, IN 47403–2121; by facsimile to 812–334–4273; or by electronic mail to *commentbfo@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew King, by telephone at 812–334–4261, extension 1216, or email at *andrew_king@fws.gov.* If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

Indiana bats were listed as an endangered species under the ESA in 1967. The decline of this species has historically been attributed to loss and degradation of winter hibernation habitat and summer roosting habitat, human disturbance during hibernation, and possibly pesticides. A recent new threat to Indiana bats is white-nose syndrome (WNS), a disease caused by the fungus *Pseudogymnoascus destructans.* WNS has caused significant population declines throughout much of the Indiana bat's range, particularly in the Northeast and Appalachian regions.

The DoF conducts management activities on 13 State Forests and 2 State Recreation Areas covering approximately 158,000 acres of state-owned forest land in Indiana. These activities include maintenance of recreation trails, timber harvest, tree plantings, prescribed burning, and the use of specific chemicals such as herbicides and fertilizers. Management activities on these lands are designed for long-term sustainability and to enhance forest health and diversity, create wildlife habitat, provide recreational opportunities and to generate revenue from timber harvests that contribute to local and state economies. While many forest management activities benefit the conservation and recovery of the Indiana bat, some activities may adversely impact this species and their habitat during certain life stages.

The net effect of forest management on Indiana bats may vary depending on the type, scale, and timing of various practices. Unlike forest conversion where habitat is permanently removed, the DoF's forest management practices are designed to promote and sustain suitable forested bat habitat on the landscape, and adverse impacts typically are temporary in nature. The primary potential benefit of forest management to the species is perpetuating forests on the landscape that provide suitable roosting and foraging habitat. Impacts from timber harvest, which can range from the selective removal of individual trees to small clearcuts, can range from positive (*e.g.,* maintaining or increasing suitable roosting and foraging habitat within Indiana bat home ranges) to neutral (*e.g.,* minor amounts of timber harvest, areas outside Indiana bats summer home ranges, away from hibernacula) to negative (*e.g.,* death of adult female bats and/or pups resulting from accidental felling of occupied maternity roost trees). Therefore, the DoF is developing a Habitat Conservation Plan (HCP) in support of an ITP that would authorize the incidental take of Indiana bats from certain forest management activities on State Forest lands within the State of Indiana.

The HCP will incorporate avoidance, minimization, mitigation, monitoring, and reporting measures aimed at addressing the impact of take caused by certain forest and property management activities occurring on approximately 158,000 acres of state-owned land managed by the DoF. The forest and property management activities included in the DoF HCP are timber harvesting, prescribed burning, timber stand improvement, and the construction and maintenance of roads, trails, and recreation and operational facilities. Potential measures to avoid, minimize, and mitigate impacts to Indiana bats may include, but are not limited to, retention of potential roost trees, sustained supply of future roost trees, protection of known roost trees, leave-tree designation near perennial streams, seasonal tree-felling restrictions around known hibernacula, and set-back distances for the protection of hibernacula entrances. The requested term of the ITP is 20 years.

Habitat Conservation Plans and Incidental Take Permits

Section 9 of the ESA prohibits "take" of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538, and 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 U.S.C. 1532(19)).

Under section 10 of the ESA, the Service may issue permits to authorize incidental take of federally listed fish and wildlife species. "Incidental take" is defined by the ESA as "take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity." To obtain an ITP, an applicant must submit an HCP to the Service that specifies (1) the impact that will likely result from the taking; (2) what steps the applicant will take to monitor, minimize and mitigate the impacts, the funding that will be available to implement such steps and the procedures to be used to deal with changed circumstances; (3) what alternative actions to the taking the applicant considered and the reasons why the alternatives are not being utilized; and (4) how the applicant will carry out any other measures that we may require as being necessary or appropriate for purposes of the HCP. 50 CFR 17.22(b)(1)(iii); 50 CFR 17.32(b)(1)(iii)(C). If we find, after opportunity for public comment, with respect to the permit application and the related HCP that (1) the taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) the applicant will ensure that adequate funding for the HCP will be provided, as well as procedures to deal with unforeseen circumstances; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the measures, if any, required by us will be carried out; and we have received assurances that the plan will be implemented, then we will issue the DoF its requested permit. 50 CFR 17.22, 17.32(b)(2)(i).

The purpose of an HCP and subsequent issuance of an ITP is to authorize the incidental take of threatened or endangered species, not to authorize the underlying activities that result in take. This process ensures that the effects of the authorized incidental take will be adequately minimized and mitigated to the maximum extent practicable (Final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process (61 FR 63854, December 2, 1996)).

Environmental Impact Statement

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Based on 40 CFR 1508.27 and 40 CFR 1508.2, we have determined that issuance of an ITP to the DoF, including implementation of its proposed HCP (*i.e.,* proposed action), may have significant impacts on the human environment. Therefore, before deciding whether to issue an ITP to the IDNR, we will prepare an EIS to analyze the environmental impacts associated with that action. The EIS will also include an analysis of a reasonable range of alternatives to the proposed action. Alternatives considered in the EIS may include, but are not limited to, variations in the permit term or permit structure; the level of take allowed; the level, location, or type of conservation, monitoring, or mitigation provided in the HCP; the scope of covered activities; or a combination of these factors. Additionally, a "no-action" alternative will be included that assesses the anticipated effects of not issuing an ITP for the DoF's management activities.

Request for Information

We request data, comments, information, and suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, and any other interested party on this notice. We will consider all comments we receive with respect to complying with the requirements of NEPA and the development of the HCP and ITP. We seek comments particularly related to:

(1) Information concerning the range, distribution, population size, and population trends of Indiana bats and other federally listed species in Indiana;

(2) Additional biological information concerning Indiana bats and other federally listed species that occur in Indiana that could be affected by activities on State-owned forest land;

(3) Relevant data and information concerning timber management practices and bat interactions;

(4) Current or planned forest management activities and their possible impacts on Indiana bats and other federally listed species in Indiana;

(5) The presence of facilities within the project planning area that are eligible to be listed on the National Register of Historic Places, or whether other historical, archeological, or traditional cultural properties may be present; and

(6) Any other environmental issues that we should consider with regard to the HCP coverage area and potential ITP issuance.

Next Steps

We are seeking information to assist us in the development of the EIS and the associated HCP. We will develop a draft EIS based on a complete ITP application, draft HCP, and public comments received through this early scoping effort. We may solicit additional public, agency, and Tribal input to identify the nature and scope of the potentially significant environmental issues that should be addressed in the EIS. We will publish a notice of availability for the draft EIS and draft HCP, and seek additional public comments, before completing our final analysis to determine whether to issue an ITP to the DoF.

Public Availability of Comments

All comments received, including names and addresses, will become part of the administrative record and will be available to the public. Before including your address, phone number, electronic mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and per NEPA regulations (40 CFR 1501.7, 1506.5, and 1508.22).

Dated: August 22, 2016.

Lori H. Nordstrom,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2016–22455 Filed 9–16–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[16XD4523WC DWCFSC000.4A0000 DS68664000 DP.BCQSO.16DOIC4A]

Proposed Renewal of Information Collection: OMB Control Number 1084–0033, Private Rental Survey

AGENCY: Office of the Secretary, Office of Acquisition and Property Management.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Acquisition and Property Management, Office of the Secretary, Department of the Interior, has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information for the "Private Rental Survey" OMB Control No. 1084–0033. The information collection request (ICR) describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by October 19, 2016, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1084–0033), by telefax at (202) 395–5806 or via email to *OIRA_submission@omb.eop.gov.* Also, please send a copy of your comments to Laura Walters, Quarters Rental Program Manager, 7301 W Mansfield Ave, MS D–2910, Denver, CO 80235, or fax: 303–969–6634, or by email to *laura_a_walters@ibc.doi.gov.* Individuals providing comments should reference "Private Rental Survey" OMB Control No. 1084–0033.

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection or to obtain a copy of the collection instrument, please write or call Laura Walters, Quarters Rental Program Manager, 7301 W Mansfield Ave, MS D–2910, Denver, CO 80235, or fax: 303–969–6634, or by email to *laura_a_walters@ibc.doi.gov.* Individuals providing comments should reference "Private Rental Survey" OMB Control No. 1084–0033. To see a copy of the entire ICR submitted to OMB, go to: *http://www.reginfo.gov* and select Information Collection Review, Currently Under Review.

SUPPLEMENTARY INFORMATION:

I. Abstract

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–131), require that interested members of the public and affected parties have an opportunity to comment on information collection and recordkeeping activities. This notice identifies an information collection activity that the Office of Acquisition and Property Management has submitted to OMB for renewal.

Title 5 of the U.S. Code section 5911 authorizes Federal agencies to provide housing for Government employees under specified circumstances. In compliance with OMB Circular A–45 (Revised), Rental and Construction of Government Quarters, a review of private rental market housing rates is required at least once every 5 years to ensure that the rental, utility charges, and charges for related services to occupants of Government Furnished Housing (GFH) are comparable to corresponding charges in the private sector. To avoid unnecessary duplication and inconsistent rental rates, the Department of the Interior, Office of the Secretary, Interior Business Center (on behalf of the Office of Acquisition and Property Management), conducts housing surveys in support of employee housing management programs for the Departments of the Interior (DOI), Agriculture, Commerce, Homeland Security, Justice, Transportation, Health and Human Services, and Veterans Affairs. In this survey, two collection forms are used: OS–2000 covering "Houses—Apartments—Mobile Homes," and OS–2001 covering "Trailer Spaces."

This collection of information provides data that is essential for DOI and the other Federal agencies to manage GFH in accordance with the requirements of OMB Circular A–45 (Revised). If this information were not collected from the public, DOI and the other Federal agencies providing GFH would be required to use professional real estate appraisals of private market rental costs, again, in accordance with OMB Circular A–45.

II. Data

(1) *Title:* Private Rental Survey.

OMB Control Number: 1084–0033.

Current Expiration Date: October 31, 2013.

Type of Review: Information Collection Renewal.

Affected Entities: Individuals or households, Businesses and other for-profit institutions.

Obligation to Respond: Voluntary.

Estimated annual number of respondents: 1,598 for OS–2000 and 285 for OS–2001.

Frequency of response: Annually.

(2) *Annual reporting and record keeping burden:*

Total annualized reporting per response: 6 minutes for form OS–2000 and 4 minutes for form OS–2001.

Total annualized reporting: 342 hours.

(3) *Description of the need and use of the information:* This information collection provides the data that enables DOI to determine open market rental costs for GFH. These rates in turn enable DOI and other Federal agencies to set GFH rental rates in accordance with the requirements of OMB Circular A–45 (Revised).

(4) As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the information collection was published on May 5, 2016 (81 FR 27171). No comments were received. This notice provides the public with an additional 30 days in which to comment on the proposed information collection activity.

III. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques.

"Burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

David D. Alspach,

Information Collection Clearance Officer, Office of the Secretary, Department of the Interior.

[FR Doc. 2016–22374 Filed 9–16–16; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–21832; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before August 20, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by October 4, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before August 20, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

ARIZONA

Maricopa County

General Sales Company Warehouse, 515 E. Grant St., Phoenix, 16000681

ARKANSAS

Pulaski County

Stebbins and Roberts Office Building and Factory, 1300 E. 6th St., Little Rock, 16000682

DISTRICT OF COLUMBIA

District of Columbia

Davidson Building, 927 15th St. NW., Washington, 16000683

Kelsey Temple Church of God in Christ, 1435–1437 Park Rd. NW., Washington, 16000684

Saul, B.F., Building, 925 15th St. NW., Washington, 16000685

GEORGIA

Chatham County

Weil, Edgar A., House, 802 14th St., Tybee Island, 16000686

IOWA

Polk County

Polk County Homestead and Trust Company Addition Historic District (Towards a Greater Des Moines MPS), Both sides of 7th & 8th Sts., S. of Franklin & N. of College Aves., Des Moines, 16000687

Washington County

Woodlawn Cemetery Gates and Shelter, 501 W. Adams, Washington, 16000688

Woodbury County

Lewis System Armored Car and Detective Service Building, 700 Nebraska St., Sioux City, 16000689

MASSACHUSETTS

Berkshire County

Boston Finishing Works, 160 Water St., Williamstown, 16000690

NEW JERSEY

Hunterdon County

Raven Rock Road Bridge (Bridges of Delaware Township, Hunterdon County, New Jersey MPS), Rosemont-Raven Rock Rd., Delaware Township, 16000691

Stone Sign Post Road Bridge over Plum Brook (Bridges of Delaware Township, Hunterdon County, New Jersey MPS), Stone Sign Post Rd., Delaware Township, 16000692

Strimple's Mill Road Bridge over Lockatong Creek (Bridges of Delaware Township, Hunterdon County, New Jersey MPS), Strimple's Mill Rd., Delaware Township, 16000693

NEW YORK

Erie County

Prospect Hill Historic District, Columbus Pkwy., Columbus Park W., Busti & Rhode Island Aves., Niagara & Vermont Sts., Buffalo, 16000694

Nassau County

Church of Our Lady of Kazan, 2 Willow Shore Ave., Sea Cliff, 16000695

PENNSYLVANIA

Allegheny County

St. Thomas Memorial Church, 378 Delaware Ave., Oakmont Borough, 16000696

Butler County

Harmony Mennonite Meetinghouse and Cemetery, 114 Wise Rd., Jackson Township, 16000697

VIRGIN ISLANDS

St. Croix County

St. John's Episcopal Church, Plot #27 King St., Christiansted, 16000698

St. John County

Cruz Bay Town Historic District, Town boundary, Cruz Bay, 16000699

Authority: 60.13 of 36 CFR part 60.

Dated: August 24, 2016.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2016–22439 Filed 9–16–16; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Integrated Circuits with Voltage Regulators and Products Containing Same, DN 3174;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under § 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of R2 Semiconductor, Inc. on September 12, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuits with voltage regulators and products containing same. The complaint names as respondents Intel Corporation of Santa Clara, CA; Intel Ireland Ltd. of Ireland; Intel Products Vietnam Co., Ltd. of Vietnam; Intel Israel 74 Ltd. of Israel; Intel Malaysia Sdn. Berhad of Malaysia; Intel China, Ltd. of China; Dell, Inc. of Round Rock, TX; Dell Technologies Inc. of Round Rock, TX; HP Inc. of Palo Alto, CA; and Hewlett Packard Enterprise Co. of Palo Alto, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3174") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 13, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–22384 Filed 9–16–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1020]

Certain Industrial Control System Software, Systems Using Same and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 5, 2016, under section 337 of the Tariff Act of 1930, as amended, 19

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[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

U.S.C. 1337, on behalf of Rockwell Automation, Inc. of Milwaukee, Wisconsin. A letter supplementing the complaint was filed on August 12, 2016. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain industrial control system software, systems using same and components thereof by reason of infringement of U.S. Patent No. 6,675,226 ("the '226 patent"); U.S. Patent No. 6,816,817 ("the '817 patent"); U.S. Patent No. 6,819,960 ("the '960 patent"); U.S. Patent No. 6,978,225 ("the '225 patent"); U.S. Patent No. 7,130,704 ("the '704 patent"); U.S. Patent No. 7,650,196 ("the '196 patent"); U.S. Patent No. 7,693,585 ("the '585 patent"); and U.S. Patent No. 8,799,800 ("the '800 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 13, 2016, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain industrial control system software, systems using the same, and components thereof by reason of infringement of one or more of claims 1, 9, and 10 of the '226 patent; claims 21, 25–27, and 30–35 of the '817 patent; claims 1–5, 7, 10, and 23–26 of the '960 patent; claims 1 and 3–6 the '225 patent; claims 1–3, 9, 13–16, 20 and 21 of the '704 patent; claims 1–6, 8–10, 12, 13, 15, and 16 of the '196 patent; claims 1, 2, 4, 5, 7, 15, 17–19, 21, and 25 of the '585 patent; claims 1, 3–5, and 7–15 of the '800 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Rockwell Automation, Inc., 1201 South 2nd Street, Milwaukee, WI 53204–2410.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: 3S-smart Software Solutions, GmbH, Memminger Str. 151, 87439 Kempten, Germany; Advantech Corporation, 380 Fairview Way, Milpitas, CA 95035; Advantech Co., Ltd., No. 1, Alley 20, Lane 26, Rueiguang Road, Neihu District, Taipei City, Taiwan.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 13, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–22430 Filed 9–16–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Silicon-on-Insulator Wafers, DN 3153;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under § 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's

Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Silicon Genesis Corporation on May 26, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain silicon-on-insulator wafers. The complaint names as respondent Soitec, S.A. of France. The complainant requests that the Commission issue a limited exclusion order, a cease and desist order, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3153") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.[1]) Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 13, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–22425 Filed 9–16–16; 8:45 am]

BILLING CODE 7020–02–P

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[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[CPCLO Order No. 007–2016]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, United States Department of Justice

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A–130, the Federal Bureau of Investigation (FBI), a component of the United States Department of Justice (Department or DOJ), proposes to establish a new system of records titled, "FBI Insider Threat Program Records (ITPR)," JUSTICE/FBI–023, to establish certain capabilities to detect, deter, and mitigate threats by FBI personnel including, but not limited to, employees, Joint Task Force Members, contractors, detailees, assignees, and interns, with authorized access to FBI facilities, information systems, or Classified information. FBI personnel assigned to the FBI Insider Threat Prevention and Detection Program (ITPDP) will use the system to facilitate management of insider threat inquiries and activities associated with inquiries and referrals; identify potential threats to FBI resources and information assets; track referrals of potential insider threats to internal and external partners; and provide statistical reports and meet other insider threat reporting requirements. The FBI is concurrently

issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act elsewhere in this **Federal Register**. For an overview of the Privacy Act, see: *https://www.justice.gov/opcl/privacy-act-1974.*

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by October 19, 2016.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments to the U.S. Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530–0001, or by facsimile at 202–307–0693. To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Richard R. Brown, Federal Bureau of Investigation, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, J. Edgar Hoover Building, 935 Pennsylvania Avenue NW., Washington, DC 20535–0001, telephone (202) 324–3000.

SUPPLEMENTARY INFORMATION: The FBI has created a system of records, known as the FBI Insider Threat Program Records (ITPR), to manage insider threat matters within the FBI. Presidential Executive Order (E.O.) 13587, *Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information,* issued October 7, 2011, required Federal agencies to establish an insider threat detection and prevention program to ensure the security of Classified networks and the responsible sharing and safeguarding of Classified information consistent with appropriate protections for privacy and civil liberties. This system of records has been established to enable the FBI to implement the requirements of E.O. 13587, to meet operating capability requirements as defined by the *National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs* (Nov. 21, 2012), and to fulfill responsibilities under DOJ Order 0901, *Insider Threat* (Feb. 12, 2014).

The Presidential Memorandum—*National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs* (Nov. 21, 2012) states that an insider threat is the threat that any person with authorized access to any United States Government resources, to include personnel, facilities, information, equipment, networks or systems, will use her/his authorized access, wittingly or unwittingly, to do harm to the security of the United States through espionage, terrorism, unauthorized disclosure of national security information, or through the loss or degradation of departmental resources or capabilities. The FBI ITPR may include information lawfully obtained by the FBI from any FBI, DOJ, or United States Government component, from other domestic or foreign government entities, or obtained from private entities, which is necessary to identify, analyze, or resolve insider threat matters. All FBI employees are cleared for access to handle Classified information.

In accordance with Privacy Act requirements of 5 U.S.C. 552a(r), the Department of Justice has provided a report to OMB and to Congress on this new system of records.

September 2, 2016.

Erika Brown Lee,

Chief Privacy and Civil Liberties Officer, Department of Justice.

JUSTICE/FBI–023

SYSTEM NAME:

FBI Insider Threat Program Records (ITPR).

SYSTEM CLASSIFICATION:

This system includes both Classified and Unclassified information.

SYSTEM LOCATION:

Records may be maintained at all locations at which the Federal Bureau of Investigation (FBI) operates or at which FBI operations are supported, including: J. Edgar Hoover Bldg., 935 Pennsylvania Avenue NW., Washington, DC 20535–0001; FBI Academy and FBI Laboratory, Quantico, VA 22135; FBI Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Rd., Clarksburg, WV 22602–4843; and FBI field offices, legal attaches, information technology centers, and other components as listed on the FBI's Internet Web site, *https://www.fbi.gov.* Some or all system information may also be duplicated at other locations where the FBI has granted direct access for support of FBI missions, for purposes of system backup, emergency preparedness, and/or continuity of operations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by this system are persons with authorized access to FBI facilities, information systems, or Classified information, including but not limited to present and former FBI employees, Joint Task Force Members, contractors, detailees, assignees, and interns.

CATEGORIES OF RECORDS IN THE SYSTEM:

An insider threat is defined as the threat that any person with authorized access to any FBI resource, to include personnel, facilities, information, equipment, networks, or systems may use his/her authorized access, wittingly or unwittingly, to do harm to the security of the United States, including damage to the United States through espionage, terrorism, unauthorized disclosure of national security information, or through the loss or degradation of FBI resources or capabilities. *See* Presidential Memorandum, *National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs* (Nov. 21, 2012). Records in the ITPR system consist of information necessary to identify, analyze, or resolve insider threat matters. Such records and information may include or be derived from, but are not limited to:

A. All relevant counterintelligence and security databases and files, including personnel security files, polygraph examination reports, facility access records, security violation files, travel records, foreign contact reports, and financial disclosure filings.

B. All relevant Unclassified and Classified network information generated by Information Assurance elements, including, but not limited to, personnel usernames and aliases, levels of network access, audit data, unauthorized use of removable media, print logs, and other data needed for clarification or resolution of an insider threat concern.

C. All relevant Human Resources databases and files including, but not limited to: Personnel files, payroll and voucher files, outside work and activities requests, disciplinary files, and personal contact records, as may be necessary for resolving or clarifying insider threat matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order (E.O.) 12968, *Access to Classified Information,* issued August 2, 1995, 60 FR 40245 (Aug. 7, 1995), as amended by E.O. 13467, *Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information,* issued June 30, 2008, 73 FR 38103 (July 2, 2008); E.O. 13526, *Classified National Security Information,* issued December 29, 2009, 75 FR 707 (Jan. 5, 2010); and E.O. 13587, *Structural Reforms to Improve* *the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information,* issued October 7, 2011, 76 FR 63811 (Oct. 13, 2011); and Presidential Memorandum, *National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs* (Nov. 21, 2012). DOJ Order 901, *Insider Threat* (Feb. 12, 2014), also directs the head of each Department Component to implement DOJ policy and minimum standards issued pursuant to this policy and in coordination with the DOJ ITPDP and "[p]romulgate additional Component guidance, if needed, to reflect unique mission requirements consistent with meeting the minimum standards and guidance issued pursuant to this policy."

PURPOSE(S):

To monitor, detect, deter, and/or mitigate FBI insider threats. The FBI has established the FBI ITPDP and this system of records in order to implement the requirements of E.O. 13587, *Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information* (Oct. 7, 2011), and the *National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs* (Nov. 21, 2012). These authorities require agencies with access to Classified information to establish certain capabilities for detecting, deterring, and/or mitigating insider threats, including: Accessing, gathering, integrating, assessing, and sharing information and data derived from offices across the organization for a centralized analysis, reporting, and response; monitoring user activity on Classified computer networks controlled by the federal government; evaluating personnel security information; and establishing procedures for insider threat response actions, such as inquiries, to clarify or resolve insider threat matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), relevant information contained in this system of records may be disclosed as a routine use, under 5 U.S.C. 552a(b)(3), in accordance with the blanket routine uses established for FBI record systems. *See* Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records, JUSTICE/FBI–BRU, published at 66 FR 33558 (June 22, 2001), and amended at 70 FR 7513 (Feb. 14, 2005), and 72 FR 3410 (Jan. 25, 2007). In addition, relevant information contained in this system of records may be disclosed as a routine use, under 5 U.S.C. 552a(b)(3), under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

A. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

B. To a governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, or national security intelligence information for such purposes when determined to be relevant by the FBI.

C. To any person, organization, or governmental entity in order to notify them of a potential terrorist threat for the purpose of guarding against or responding to such threat.

D. To an agency of a foreign government or international agency or entity where the FBI determines that the information is relevant to the recipient's responsibilities, dissemination serves the best interests of the U.S. Government, and where the purpose in making the disclosure is compatible with the purpose for which the information was collected.

E. To any entity or individual where there is reason to believe the recipient is or could become the target of a particular criminal activity, conspiracy, or other threat, to the extent the information is relevant to the protection of life, health, or property. Information may similarly be disclosed to other recipients to the extent the information is relevant to the protection of life, health, or property.

F. To appropriate agencies, entities, and persons when (1) the FBI suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the FBI has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the FBI or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FBI's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

G. To contractors, grantees, experts, consultants, detailees, students, or others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the FBI, when necessary to accomplish an agency function related to this system of records.

H. To the news media or members of the general public in furtherance of a legitimate law enforcement or public safety function as determined by the FBI and, where applicable, consistent with 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

I. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the FBI determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

J. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or informal discovery proceedings.

K. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

L. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and the request of, the individual who is the subject of the record.

M. To any agency, organization, or individual for the purposes of performing authorized audit or oversight operations of the FBI and meeting related reporting requirements.

N. To the National Archives and Records Administration (NARA) for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

O. To a former employee of the FBI for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable FBI or Department of Justice regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

P. To the White House (the President, Vice President, their staffs, and other entities of the Executive Office of the President (EOP)), and, during Presidential transitions, the President-elect and Vice President-elect and their designees for appointment, employment, security, and access purposes compatible with the purposes for which the records were collected by the FBI, *e.g.*, disclosure of information to assist the White House in making a determination whether an individual should be: (1) Granted, denied, or permitted to continue in employment on the White House Staff; (2) given a Presidential appointment or Presidential recognition; (3) provided access, or continued access, to Classified or sensitive information; or (4) permitted access, or continued access, to personnel or facilities of the White House/EOP complex. System records may also be disclosed to the White House and, during Presidential transitions, to the President-elect and Vice-President-elect and their designees, for Executive Branch coordination of activities that relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President, President-elect, Vice-President or Vice-President-elect. System records or information may also be disclosed during a Presidential campaign to a major-party Presidential candidate, including the candidate's designees, to the extent the disclosure is reasonably related to a clearance request submitted by the candidate for the candidate's transition team members pursuant to Section 7601 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended.

Q. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigations or cases arising from the matters of which they complained and/or of which they were a victim.

R. To appropriate officials and employees of a federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail, or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

S. To federal, state, local, tribal, territorial, foreign, or international licensing agencies or associations, when the FBI determines the information is relevant to the suitability or eligibility of an individual for a license or permit.

T. To designated officers and employees of state, local, territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant to the recipient agency's decision.

U. To such agencies, entities, and persons as is necessary to ensure the continuity of government functions in the event of any actual or potential disruption of normal government operations. This use encompasses all manner of such situations in which government operations may be disrupted, including: Military, terrorist, cyber, or other attacks, natural or manmade disasters, and other national or local emergencies; inclement weather and other acts of nature; infrastructure/utility outages; failures, renovations, or maintenance of buildings or building systems; problems arising from planning, testing or other development efforts; and other operational interruptions. This also includes all related pre-event planning, preparation, backup/redundancy, training and exercises, and post-event operations, mitigation, and recovery.

V. To any person or entity, if necessary to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized law enforcement, national security, or intelligence function.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper and/or in electronic form. Electronic records are stored in enterprise information technology platforms and networks, databases and/or on hard disks, removable storage devices or other electronic media. Paper records may be stored in individual file folders and file cabinets with controlled access, or other appropriate GSA-approved security containers. Classified information is stored in accordance with applicable legal, administrative, and other requirements.

RETRIEVABILITY:

Information in this system may be retrieved by an individual's name, user ID, email address, Social Security number, unique employee identifier, as well as by use of key word search terms, including the names of persons with whom covered individuals have interacted or to whom they have been linked.

SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by authorized personnel. Physical security protections include guarded and locked facilities requiring badges and passwords for access and other physical and technological safeguards (such as role-based access and strong passwords) to prevent unauthorized access. All visitors must be accompanied by authorized staff personnel at all times. Highly Classified or sensitive privacy information is electronically transmitted on secure lines and in encrypted form to prevent interception and interpretation. Users accessing system components through mobile or portable computers or electronic devices such as laptop computers, multi-purpose cell phones, and personal digital assistants (PDAs) must comply with the FBI's remote access policy, which requires encryption. All FBI employees receive a complete background investigation prior to being hired. Other persons with authorized access to system records receive comparable vetting. All personnel are required to undergo privacy and annual information security training, and are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates DOJ regulations and may violate certain civil and criminal statutes providing for penalties of fine or imprisonment or both. As a condition of employment, FBI personnel also sign nondisclosure agreements which encompass both Classified and Unclassified information and remain in force even after FBI employment. Employees who resign or retire are also cautioned about divulging information acquired in their FBI capacity.

RETENTION AND DISPOSAL:

Records in this system are maintained and destroyed in accordance with applicable schedules and procedures issued or approved by the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Director, Federal Bureau of Investigation, 935 Pennsylvania Avenue NW., Washington, DC 20535–0001.

NOTIFICATION PROCEDURE:

Same as RECORD ACCESS PROCEDURES, below.

RECORD ACCESS PROCEDURES:

The Attorney General has exempted this system of records from the notification, access, and contest procedures of the Privacy Act. These exemptions apply only to the extent that the information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Where compliance would not appear to interfere with or adversely affect the purposes of the system, or the overall law enforcement/intelligence process, the applicable exemption (in whole or in part) may be waived by the FBI in its sole discretion.

All requests for access should follow the guidance provided on the FBI's Web site at *https://www.fbi.gov/services/records-management/foipa.* Individuals may mail, fax or email a request, clearly marked "Privacy Act Access Request," to the Federal Bureau of Investigation, ATTN: FOI/PA Request, Record/Information Dissemination Section, 170 Marcel Drive, Winchester, VA 22602–4843; Fax: 540–868–4995/6/7; Email: (scanned copy) *foiparequest@ic.fbi.gov.* The request should include a general description of the records sought and must include either a completed Department of Justice Certification of Identity Form, DOJ–361, which can be located at the above link, or a letter that has been notarized which includes: The requester's full name, current and complete address, and place and date of birth. In the initial request the requester may also include any other identifying data that the requester may wish to furnish to assist the FBI in making a reasonable search. The request should include a return address for use by the FBI in responding; requesters are also encouraged to include a telephone number to facilitate FBI contacts related to processing the request. A determination of whether a record may be accessed will be made after a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests according to the RECORD ACCESS PROCEDURES listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. The envelope and letter should be clearly marked "Privacy Act Amendment Request" and comply with 28 CFR § 16.46. Some information may be exempt from contesting record procedures as described in the EXEMPTIONS CLAIMED FOR THE SYSTEM paragraph. An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Information may be provided by individuals covered by this system, the FBI, DOJ and United States Government components, other domestic and foreign government entities, or obtained from private entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system of records from subsection (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), and (3); (e)(4) (G), (H) and (I); (e)(5) and (8); (f) and (g) of the Privacy Act. These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Rules are being promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in today's **Federal Register**. In addition, the DOJ will continue in effect and claim all exemptions claimed under 5 U.S.C. 552a(j) or (k) (or other applicable authority) by an originating agency from which the DOJ obtains records, where one or more reasons underlying an original exemption claim remain valid. Where compliance with an exempted provision could not appear to interfere with or adversely affect interests of the United States or other stakeholders, the DOJ in its sole discretion may waive an exemption in whole or in part; exercise of the discretionary waiver prerogative in a particular matter shall not create any entitlement to or expectations of waiver in that matter or any other matter. As a condition of discretionary waiver, the DOJ in its sole discretion may impose any restrictions deemed advisable by the DOJ (including, but not limited to, restrictions on the location, manner, or scope of notice, access or amendment).

[FR Doc. 2016–22410 Filed 9–16–16; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On September 13, 2016, a proposed Consent Decree in *United States of America* v. *Total Petroleum Puerto Rico Corporation,* Civil Action No.3:16–cv–02641, was filed with the United States District Court for Puerto Rico.

The proposed Consent Decree between the parties resolves the United States' claims that Total Petroleum violated the Clean Water Act and permits it holds under the Act at Total Petroleum's Bulk Fuels Terminal in Guaynabo, Puerto Rico. The proposed Consent Decree requires Total Petroleum to undertake work at its facility to comply with the Act and the permits it holds, to pay a $345,000 civil penalty, and to undertake a project to improve aquatic habitat in the nearby San Juan Harbor.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to: *United States of America* v. *Total Petroleum Puerto Rico Corporation,* Civil Action No.3:16–cv–02641, D.J. Ref. 90–5–1–1–10983. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $18.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–22466 Filed 9–16–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Income and Eligibility Verification System Confidentiality

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Income and Eligibility Verification System Confidentiality," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 19, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201609-1205-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Income and Eligibility Verification System (IEVS) Confidentiality information collection. More specifically, this ICR relates to information collections established by the Deficit Reduction Act of 1984 (DRA), which created an IEVS for the exchange of information among State agencies administering specific programs. IEVS covered programs include Temporary Assistance for Needy Families; Medicaid; Food Stamps; Supplemental Security Income; Unemployment Compensation; and any State program approved under Social Security Act (SSA) titles I, X, XIV, or XVI. Under the DRA, participating programs must exchange information to the extent it is useful and productive in verifying eligibility and benefit amounts that assist the child support program and the Secretary of Health and Human Services in verifying eligibility and benefit amounts under SSA titles II and XVI. On September 27, 2006, the ETA issued a final rule regarding the Confidentiality and Disclosure of State Unemployment Compensation Information. *See* 71 FR 56830. This rule supports and expands upon the DRA statutory requirements and subsequent regulatory changes. A State is required to use a data sharing agreement when making a disclosure, to provide some assurance that a recipient of disclosed information follows safeguards protecting confidentiality; to provide an enforcement mechanism against any recipient that breaches those safeguards; and to show that the State has complied with the rule. A State Workforce Agency is required to provide notice to both employers and claimants about the uses of information the Agency provides the IEVS. SSA section 303 authorizes this information collection. *See* 42 U.S.C. 503.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0238.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on September 30, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 4, 2016 (81 FR 11592).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0238. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Income and Eligibility Verification System Confidentiality.

OMB Control Number: 1205–0238.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 904,957.

Total Estimated Annual Time Burden: 18,672 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: September 13, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–22475 Filed 9–16–16; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Proposed Information Collection Request Submitted for Public Comment and Recommendations Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veteran's Preference (USERRA/VP)

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Notice.

SUMMARY: The Veterans' Employment and Training Service (VETS) is announcing an opportunity for public comment on a proposed collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. In this notice, VETS is soliciting comments concerning the proposed information collection request for the VETS USERRA/VP Form 1010.

DATES: Comments are to be submitted by November 18, 2016.

ADDRESSES: Follow the instructions for submitting comments.

- *Email: 1010-FRN-2016-VETS@dol.gov.* Include "VETS–1010 Form" in the subject line of the message.
- *Fax:* (202) 693–4755. Please send comments by fax only if they are 10 pages or less.
- *Mail:* Kenan Torrans, Deputy Director, Compliance and Investigations, VETS, U.S. Department of Labor, Room S–1316, 200 Constitution Avenue NW., Washington, DC 20210.
- Receipt of submissions, whether by U.S. Mail, email, or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693–4731 (VOICE) (this is not a toll-free number) or (202) 693–4760 (TTY/TDD).

All comments received, including any personal information provided, will be available for public inspection during normal business hours at the above address. People needing assistance to review comments will be provided with appropriate aids such as readers or print magnifiers.

FOR FURTHER INFORMATION CONTACT: Kenan Torrans, Deputy Director, Compliance and Investigations, VETS, U.S. Department of Labor, Room S–1316, 200 Constitution Avenue NW., Washington, DC 20210, or by email at: *1010-FRN-2016-VETS@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The VETS USERRA/VP Form 1010 (VETS–1010 Form) is used to file complaints with the Department of Labor's Veterans' Employment and Training Service (VETS) under either the Uniformed Services Employment and Reemployment Rights Act (USERRA) or the laws and regulations related to Veterans' Preference (VP) in Federal employment. On October 13, 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA), Public Law 103–353, 108 Stat. 3150 was signed into law. Contained in Title 38, U.S.C. 4301–4335, USERRA is the replacement for the Veterans' Reemployment Rights (VRR) law. The purposes of USERRA laws and regulations are: To minimize disruption to the lives of persons who perform service in the uniformed services (including the National Guard and Reserves), as well as to their employers, their fellow employees, and their communities, by providing for prompt reemployment of such persons upon completion of such service; to encourage individuals to participate in non-career uniformed service by eliminating and minimizing the disadvantages to civilian careers and employment which can result from such service; and to prohibit discrimination in employment and acts of reprisal against persons because of their obligations in the uniformed services, prior service, intention to join the uniformed services, filing of a USERRA claim, seeking assistance concerning an alleged USERRA violation, testifying in a proceeding, or otherwise assisting in an investigation of a USERRA claim. The Veterans Employment Opportunities Act (VEOA) of 1998, Public Law 105–339, 12 Stat. 3182, contained in Title 5 U.S.C. 3330a–3330c, authorizes the Secretary of Labor to provide assistance to preference eligible individuals who believe their rights under the veterans' preference laws have been violated, and to investigate claims filed by those individuals. The purposes of veterans' preference laws include: To provide preference for certain veterans over others in Federal hiring from competitive lists of applicants; to allow access and open up Federal job opportunities to veterans that might otherwise be closed to the public; and to provide preference eligible veterans with preference over others in retention during reductions in force in Federal agencies. VETS has an electronic complaint form, the VETS e1010, available on our Web site at: *https://vets1010.dol.gov/Login.aspx,* and which may also be accessed via our USERRA elaws Advisor (*www.dol.gov/elaws/USERRA.htm*) and Veterans' Preference elaws Advisor (*www.dol.gov/elaws/vetspref.htm*). The e1010 may be completed and submitted electronically without having to download, print, and mail a signed hard copy to our Atlanta data center.

II. Desired Focus of Comments

VETS is soliciting comments concerning the proposed information collection in the VETS–1010 Form. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

III. Current Actions

This notice requests an extension of the current Office of Management and Budget approval of the paperwork requirements for VETS–1010 Form.

Type of Review: Extension.

Agency: Veterans' Employment and Training Service.

Title: VETS/USERRA/VP (VETS–1010 Form.)

OMB Number: 1293–0002.

Affected Public: Individuals or households.

Total Respondents: Approximately 2,250.

Average Time per Response: 30 minutes, including 10 minutes estimated to collect the information needed to file a USERRA or VP claim and 20 minutes estimated to complete the form.

Total Burden Hours: 1,125 hours.

Total Annualized Capital/Startup costs: $0.

Total Initial Annual Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for the Office of Management and Budget approval of the information collection request.

Comments will become a matter of public record.

Michael H. Michaud,

Assistant Secretary, Veterans' Employment and Training Service, U.S. Department of Labor.

[FR Doc. 2016–22484 Filed 9–16–16; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 16–060]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, September 29, 2016, 8:30 a.m.–5:00 p.m., and Friday, September 30, 2016, 8:30 a.m.–5:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 5H41, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the meeting room. This meeting is also available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll free number 1–877–918–9234 or toll number 1–630–395–0299, passcode 4532334, for both days. The WebEx link is *https://nasa.webex.com/;* the meeting number on September 29 is 996 721 448, password is PSS@Sep29 (case sensitive); and the meeting number on September 30 is 999 540 202, password is PSS@Sep30 (case sensitive). The agenda for the meeting includes the following topics:

—Planetary Science Division Update

—Planetary Science Division Research and Analysis Program Update

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Due to the Real ID Act, any attendees with drivers licenses issued from non-compliant states must present a second form of ID. Non-compliant states are: American Samoa, Minnesota, Missouri, and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizens and Permanent Residents (green card holders) can provide full name and citizenship status 3 working days in advance by contacting Ann Delo via email at *ann.b.delo@nasa.gov* or by fax at (202) 358–2779. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–22433 Filed 9–16–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Call Report and Credit Union Profile

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a revision of a previously approved collection, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Written comments should be received on or before November 18, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0004.

Title: NCUA Call Report and Profile.

Form: NCUA Forms 5300 and 4501A.

Abstract: Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions to make financial reports to the NCUA. Section 741.6 prescribes the method in which federally insured credit unions must submit this information to NCUA. NCUA Form 5300, Call Report, is used to file quarterly financial and statistical data and NCUA Form 4501A, Credit Union Profile, is used to obtain non-financial data relevant to regulation and supervision such as the names of senior management and volunteer officials, and are reported through NCUA's on-line portal, Credit Unions Online.

Revisions are being made to NCUA Forms 5300, Call Report, and 4501A, Credit Union Profile, to capture applicable data implemented by amendments to 12 CFR part 723, Member Business Loans; Commercial Lending. Changes involve moving loan details to a separate page and revising the Call Report loans and business lending, and Credit Union Profile programs and services sections to reflect "commercial" lending terminology. The amount of data elements removed compared to those being added have negated any program differences in burden. Adjustments in the number respondents are due to the decline of federally-insured credit unions.

Type of Review: Revision of a previously approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 5,954.

Estimated No. of Responses per Respondent: 4.

Estimated Annual Responses: 23,816.

Estimated Burden Hours per Response: 6.

Estimated Total Annual Burden Hours: 142,896.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on September 14, 2016.

Dated: September 14, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–22457 Filed 9–16–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before October 19, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314, Suite 5067, or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0052.

Type of Review: Extension of a previously approved collection.

Title: Federal Credit Union Bylaws.

Abstract: Section 108 of the Federal Credit Union (FCU) Act (12 U.S.C. 1758) requires the National Credit Union Administration (NCUA) Board to prepare bylaws before an FCU's charter is complete. The form bylaws are established to simplify the organization of a FCU and establish uniformity regarding FCU operations and member rights. The NCUA Board adopted the Bylaws and incorporated them into NCUA's regulations at 12 CFR 701.2 and as Appendix A to Part 701, in 2007. The bylaws address a broad range of matters concerning: an FCU's organization and governance; the FCU's relationship to members; and the procedures and rules an FCU follows. The NCUA uses the information both to regulate FCUs to protect consumers and monitor their safety and soundness to protect the National Credit Union Share Insurance Fund.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Annual Burden Hours: 436,614.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on September 14, 2016.

Dated: September 14, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–22456 Filed 9–16–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewal of the Survey of Doctorate Recipients (OMB No.: 3145–0020). In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for three years.

DATES: Written comments on this notice must be received by November 18, 2016 to be assured consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). You may also obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title of Collection: Survey of Doctorate Recipients.

OMB Approval Number: 3145–0020.

Expiration Date of Approval: August 31, 2018.

Type of Request: Intent to seek approval to extend an information collection for three years.

Abstract: The Survey of Doctorate Recipients (SDR) has been conducted biennially since 1973 and is a longitudinal survey. The 2017 SDR will consist of a sample of individuals less than 76 years of age who have earned a research doctoral degree in a science, engineering or health (SEH) field from a U.S. institution. The purpose of this panel survey is to collect data that will be used to provide national estimates on the doctoral science and engineering workforce and changes in their employment, education and demographic characteristics. The SDR is sponsored by the National Center for Science and Engineering Stataistics (NCSES) within the NSF and the National Institutes of Health. Data will be obtained by web survey, mail questionnaire, and computer-assisted telephone interviews beginning in February 2017. Information from the SDR are used in assessing the quality and supply of the nation's SEH personnel resources for educational institutions, private industry, and professional organizations, as well as federal, state, and local governments. A public release file of the collected data, designed to protect respondent confidentiality, will be made available to researchers, reporters, and other interested persons on the Internet.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to ''. . . provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The SDR is designed to comply with these mandates by providing information on the supply and utilization of the nation's doctoral level scientists and engineers.

The survey data will be collected in conformance with the Confidential Information Protection and Statistical Efficiency Act of 2002 and the individual's response to the survey is voluntary. NSF will ensure that all information collected will be kept strictly confidential and will be used only for statistical purposes.

Use of the Information: The NSF uses the information from the SDR to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering* and *Science and Engineering Indicators.* These two reports are made available, in full, on the internet. However, summary *Digests* of facts and figures from these lengthy reports are made available both in print and online. Although NSF publishes statistics from the SDR in many reports, a full report with over 80 tables is produced online in the biennial series, *Characteristics of Scientists and Engineers with U.S. Doctorates.*

Expected Respondents. The NCSES within NSF enhanced and expanded the sample for the prior 2015 cycle of the SDR to measure employment outcomes according to the eligible SEH fine fields of degree captured in the Survey of Earned Doctorates. Providing reliable estimates by fine fields required expanding the 2013 SDR sample from approximately 47,000 to 120,000 in 2015. Another effect of expanding the 2015 SDR sample is the enhanced production of reliable estimates of SEH fine fields by various demographic characteristics, such as gender, ethnicity, and race. The 2017 SDR will maintain the 2015 expanded sample along with a new sample of about 10,000 doctorates from the most recent 2014 and 2015 academic years and will not exceed 123,000 individuals in total with U.S. earned doctorates in SEH fields. NSF expects the overall 2017 SDR response rate to be approximately 75 percent.

Estimate of Burden. The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it takes approximately 25 minutes. Thus, NSF estimates that the total annual burden for the 2017 SDR will be 38,438 hours (that is, 123,000 respondents at 75% response rate for 25 minutes).

Dated: September 13, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–22402 Filed 9–16–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME AND COMMITTEE CODE: Astronomy and Astrophysics Advisory Committee (#13883).

DATE AND TIME:

October 27, 2016; 9:00 a.m.–5:00 p.m.
October 28, 2016; 9:00 a.m.–12:00 p.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Stafford II, Room 555–II.

TYPE OF MEETING: Open.

CONTACT PERSON: Dr. Christopher Davis, Program Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4910.

PURPOSE OF MEETING: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

AGENDA: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: September 13, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–22390 Filed 9–16–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0121, NRC–2011–0265, NRC–2013–0104, NRC–2013–0052, NRC–2014–0068, NRC–2014–0057 and NRC–2013–0186]

Issuance of Updates to NUREG–1556 (Consolidated Guidance About Materials Licenses), Volumes 1 (Portable Gauges), 2 (Industrial Radiography), 3 (Sealed Sources and Devices), 4 (Fixed Gauges), 10 (Master Material Licenses), 15 (Changes of Control and Bankruptcy), and 19 (Reciprocity)

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Revision 2 to NUREG–1556, Volumes 1 and 3 and Revision 1 to NUREG–1556, Volumes 2, 4, 10, 15, and 19, revising licensing guidance for various materials licenses. These documents have been updated to include information on updated regulatory requirements, safety culture, security of radioactive materials, protection of sensitive information, and changes in regulatory policies and practices. The documents are intended for use by applicants, licensees, and the NRC staff.

DATES: Volume 3 was published in September 2015. Volume 2 was published in February 2016. Volumes 1, 10, 15, and 19 were published in June 2016. Volume 4 was published in July 2016.

ADDRESSES: Please refer to Docket ID numbers [NRC–2012–0121, NRC–2013–0104, NRC–2011–0265, NRC–2013–0052, NRC–2014–0068, NRC–2014–0057 and NRC–2013–0186] when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID numbers [NRC–2012–0121, NRC–2013–0104, NRC–2011–0265, NRC–2013–0052, NRC–2014–0068, NRC–2014–0057 and NRC–2013–0186]. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

These NUREG–1556 volumes are also available on the NRC's public Web site on the: "Consolidated Guidance About Materials Licenses (NUREG–1556)" page at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/.*

FOR FURTHER INFORMATION CONTACT: Anthony McMurtray, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2746; email: *Anthony.McMurtray@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC issued revisions to these NUREG volumes to provide guidance to existing materials licensees and to applicants preparing a license application for various materials licenses. These NUREG volumes also provide the NRC staff with criteria for evaluating license applications. The purpose of this notice is to notify the public that the NUREG–1556 volumes listed in this FRN were issued as Final Reports.

II. Additional Information

The NRC published a notice of the availability of the Draft Report for Comment version of NUREG–1556, Volume 1, Revision 2 in the **Federal Register** on May 30, 2012 (77 FR 31894) for a 30-day public comment period. The public comment period closed on June 29, 2012. Public comments on Volume 1, Revision 2 and the staff responses to the public comments are available under ADAMS Accession No. ML15069A043.

The NRC published a notice of the availability of the Draft Report for Comment version of NUREG–1556, Volume 2, Revision 1 in the **Federal Register** on November 21, 2011 (76 FR 72005) for a 53-day public comment period. The public comment period closed on January 13, 2012. Public comments on Volume 2, Revision 1 and the staff responses to the public comments are available under ADAMS Accession No. ML15033A308.

The NRC published a notice of the availability of the Draft Report for Comment version of NUREG–1556, Volume 3, Revision 2 in the **Federal Register** on June 4, 2013 (78 FR 33447) for a 31-day public comment period. The public comment period closed on July 5, 2013. Public comments on Volume 3, Revision 2 and the staff responses to the public comments are available under ADAMS Accession No. ML15055A343.

The NRC published a notice of the availability of the Draft Report for Comment version of NUREG–1556, Volume 4, Revision 1 in the **Federal Register** on March 25, 2013 (78 FR 17943) for a 30-day public comment period. The public comment period closed on April 24, 2013. Public comments on Volume 4, Revision 1 and the staff responses to the public comments are available under ADAMS Accession No. ML15055A205.

The NRC published a notice of the availability of the Draft Report for Comment version of NUREG–1556, Volume 10, Revision 1 in the **Federal Register** on April 25, 2014 (79 FR 23018) for a 32-day public comment period. The public comment period closed on May 27, 2014. Public comments on Volume 10, Revision 1 and the staff responses to the public comments are available under ADAMS Accession No. ML15159B271.

The NRC published a notice of the availability of the Draft Report for Comment version of NUREG–1556, Volume 15, Revision 1 in the **Federal Register** on March 26, 2014 (79 FR 16833) for a 30-day public comment period. The public comment period closed on April 25, 2014. Public comments on Volume 15, Revision 1 and the staff responses to the public comments are available under ADAMS Accession No. ML15224B599.

The NRC published a notice of the availability of the Draft Report for Comment version of NUREG–1556, Volume 19, Revision 1 in the **Federal Register** on August 30, 2013 (78 FR 53792) for a 31-day public comment period. The public comment period closed on September 30, 2013. Public comments on Volume 19, Revision 1 and the staff responses to the public comments are available under ADAMS Accession No. ML16056A319.

III. Congressional Review Act

These NUREG volumes are rules as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found these to be major rules as defined in the Congressional Review Act.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document title	ADAMS Accession No.
NUREG–1556, Volume 1, Revision 2, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Portable Gauge Licenses".	ML16175A375
NUREG–1556, Volume 2, Revision 1, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Industrial Radiography Licenses".	ML16062A091

Document title	ADAMS Accession No.
NUREG–1556, Volume 3, Revision 2, "Consolidated Guidance About Materials Licenses: Applications for Sealed Source and Device Evaluation and Registration".	ML15246A317
NUREG–1556, Volume 4, Revision 1, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Fixed Gauge Licenses".	ML16188A048
NUREG–1556, Volume 10, Revision 1, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Master Materials Licenses".	ML16181A111
NUREG–1556, Volume 15, Revision 1, "Consolidated Guidance About Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, and Special Nuclear Materials Licenses".	ML16181A003
NUREG–1556, Volume 19, Revision 1, "Consolidated Guidance About Materials Licenses: Guidance for Agreement State Licensees About NRC Form 241 "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters" and Guidance for NRC Licensees Proposing to Work in Agreement State Jurisdiction (Reciprocity)".	ML16175A107

Dated at Rockville, Maryland, this 9th day of September 2016.

For the U.S. Nuclear Regulatory Commission

Pamela J. Henderson,

Deputy Director, Division of Material Safety, State, Tribal and Rulemaking Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–22482 Filed 9–16–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–00925; NRC–2016–0196]

Environmental Properties Management; Cimarron Facility; Decommissioning Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; notice of opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a license amendment application from Environmental Properties Management (EPM or the licensee) for the Cimarron Facility, located near Crescent, Oklahoma. The licensee is requesting an amendment to its Source and Byproduct Materials License SNM–928 to authorize decommissioning of the Cimarron Facility for unrestricted release.

DATES: A request for a hearing or petition for leave to intervene must be filed by November 18, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0196 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0196. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Kenneth Kalman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6664; email: *Kenneth.Kalman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

By letter dated May 4, 1995, the NRC received a license amendment request from Cimarron Corporation (the licensee at that time) to amend its license SNM–928 to incorporate its decommissioning plan. The NRC requested comment on the decommissioning plan (60 FR 46315; September 6, 1995). The NRC completed its review of the decommissioning plan, and issued a finding of no significant impact in the **Federal Register**, (64 FR 44059; August 12, 1999). This decommissioning plan relied on natural attenuation to reduce uranium concentrations in groundwater at the site to meet the criteria for unrestricted release. However, periodic monitoring of groundwater conditions indicated that natural attenuation was not reducing the uranium concentrations and additional areas were identified where uranium concentrations exceeded the criteria for unrestricted release.

The current licensee, EPM, submitted a license amendment request to the NRC on December 31, 2015 (ADAMS Package Accession No. ML16230A614), which, if approved, would amend Source and Byproduct Materials License SNM–928 to authorize decommissioning of the Cimarron Facility near Crescent, Oklahoma for unrestricted release. On April 7, 2016, the NRC requested additional information from EPM regarding the license amendment request (ADAMS Accession No. ML16091A427). By letter dated May 20, 2015 (ADAMS Accession No. ML16168A097), EPM submitted supplemental information in response to the NRC's request.

On September 6, 2016, the NRC found the application acceptable for a technical review (ADAMS Accession No. ML16197A056). Prior to reaching a decision on the amendment request, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act) and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report and an environmental assessment. The environmental assessment will be the subject of a subsequent notice in the **Federal Register**.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to issuance of the amendment to the subject facility operating license or combined license. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a petition is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. The petition must also set forth the specific contentions which the petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1).

The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by November 18, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter "petition"), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a petition will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, this 6th day of September 2016.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–22485 Filed 9–16–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting

DATE: September 19, 26, October 3, 10, 17, 24, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 19, 2016

Monday, September 19, 2016

9:00 a.m. Briefing on NRC Tribal Policy Statement (Public Meeting) (Contact: Maria Arribas-Colon: 301–415–6026)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of September 26, 2016—Tentative

There are no meetings scheduled for the week of September 26, 2016.

Week of October 3, 2016—Tentative

Wednesday, October 5, 2016

9:00 a.m. Hearing on Combined Licenses for William States Lee III Nuclear Station, Units 1 and 2: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting) (Contact: Brian Hughes: 301–415–6582)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, October 6, 2016

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Mark Banks: 301–415–3718)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 10, 2016—Tentative

There are no meetings scheduled for the week of October 10, 2016.

Week of October 17, 2016—Tentative

Tuesday, October 18, 2016

9:30 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Spent

Fuel Storage and Transportation Business Lines (Public Meeting) (Contact: Janelle Jessie: 301–415–6775)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, October 20, 2016

9:30 a.m. Strategic Programmatic Overview of the New Reactors Business Line (Public Meeting) (Contact: Donna Williams: 301–415–1322)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 24, 2016—Tentative

Thursday, October 27, 2016

10:00 a.m. Program Review of Part 37 of Title 10 of the *Code of Federal Regulations* (10 CFR part 37) for the Protection of Risk-Significant Quantities of Radioactive Material (Public Meeting) (Contact: George Smith: 301–415–7201)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: September 14, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–22546 Filed 9–15–16; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328; NRC–2016–0199]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a March 10, 2016, request, as supplemented by letter dated June 24, 2016, from the Tennessee Valley Authority (TVA or the licensee). The exemption permits a one-time reallocation of surplus funds from the nuclear decommissioning trust funds (DTFs) for the Sequoyah Nuclear Plant (SQN), Units 1 and 2, to the DTFs for the Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, and the Watts Bar Nuclear Plant (WBN), Units 1 and 2.

DATES: This exemption was issued on September 9, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0199 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0199. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Andrew Hon, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8480; email: *Andrew.Hon@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's regulations at §§ 50.75 and 50.82 of title 10 of the *Code of Federal Regulations* (10 CFR), provide that disbursements or payments from a DTF, other than for payment of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the DTF, are restricted to expenses for legitimate decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2 or transfer to another financial assurance method until final decommissioning has been completed. According to 10 CFR 50.2, "decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license or release of the property under restricted conditions and termination of the license. A strict interpretation of this regulatory language would prohibit a licensee from transferring funds from the DTF for one facility to the DTF for another facility. Therefore, an exemption from 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8) is needed to allow TVA to reallocate surplus funds from the DTFs for SQN Units 1 and 2 to the DTFs for BFN Units 1, 2, and 3 and WBN Units 1 and 2.

II. Request/Action

In accordance with 10 CFR 50.12, "Specific exemptions," TVA has, by letter dated March 10, 2016 (ADAMS Accession No. ML16071A237), as supplemented by letter dated June 24, 2016 (ADAMS Accession No. ML16179A346), requested that the NRC grant it a one-time exemption from the requirements of 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8) so that it may reallocate surplus funds from the DTFs for SQN Units 1 and 2 to the DTFs for BFN Units 1, 2, and 3 and WBN Units 1 and 2. TVA stated that the purpose of the proposed reallocation of surplus funds is to proportionally balance the DTFs for all of its nuclear power reactor facilities. According to TVA, two events have occurred that prompted their request for the proposed reallocation of surplus funds: (1) The issuance of renewed operating licenses for SQN Units 1 and 2, authorizing their operation for an additional 20 years; and (2) the issuance of the operating license for WBN Unit 2. TVA stated that the issuance of the SQN Units 1 and 2 renewed operating licenses resulted in an immediate projected overfunding of the DTFs for these units because they now have an additional 20 years to accrue earnings. Conversely, the DTF for WBN Unit 2, because of the recent issuance of an operating license for WBN Unit 2, currently requires annual contributions of approximately $3.5 million. TVA claims that if an exemption allowing the reallocation of some of the surplus funds from the DTFs for SQN Units 1 and 2 to the DTF for WBN Unit 2 is not granted, then TVA and its ratepayers would bear unnecessary costs to augment the DTF for WBN Unit 2.

The TVA asserted that special circumstances are present that warrant the grant of the requested exemption. Specifically, TVA stated, in part, that the reallocation of surplus funds from the DTFs for SQN Units 1 and 2 to the DTFs for BFN Units 1, 2, and 3 and WBN Units 1 and 2 is consistent with the underlying purpose of the NRC's decommissioning rules, which is to provide reasonable assurance that adequate funds will be available to complete decommissioning and thus protect the public and the environment (61 FR 39278, 39281; July 29, 1996). Additionally, TVA claimed that compliance with an interpretation of the regulations that would prohibit the proposed reallocation of surplus funds would result in undue hardship and other costs that are significantly in excess of those contemplated when the regulations were adopted. Finally, TVA stated that the requested exemption from 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8) would be a one-time exemption and that TVA will continue to comply with the external sinking fund method of decommissioning funding assurance in accordance with 10 CFR 50.75(e)(1)(ii).[1]

III. Discussion

In accordance with 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances are:

(i) Application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission; or

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or

(iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; or

(iv) The exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption; or

(v) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation; or

(vi) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If such condition is relied on exclusively for satisfying paragraph (a)(2) of this section, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

Authorized by Law

In accordance with 10 CFR 50.12, the NRC may grant an exemption from the requirements of 10 CFR part 50, if the exemption is authorized by law. The exemption requested in this instance is authorized by law because no other prohibition of law exists to preclude the activities which would be authorized by the exemption. Specifically, the requested exemption would allow the one-time reallocation of surplus funds from the DTFs for SQN Units 1 and 2 to the DTFs for BFN Units 1, 2, and 3 and WBN Units 1 and 2 such that each fund would separately satisfy the NRC's minimum funding assurance requirements with a projected excess available to address site-specific costs to decommission the facility. In addition to the NRC's regulations at 10 CFR 50.75 and 10 CFR 50.82, from which TVA is requesting an exemption, the regulations of the Federal Energy Regulatory Commission (FERC) at 18 CFR 35.32 and 18 CFR 35.33 also address the use of nuclear power plant DTFs. It states in 18 CFR 35.32(a)(6), in pertinent part, that "[a]bsent the express authorization of the [FERC], no part of the assets of the [DTF] may be used for, or diverted to, any purpose other than to fund the costs of decommissioning the nuclear power plant to which the [DTF] relates, and to pay administrative costs and other incidental expenses, including taxes, of the Fund." It states in 18 CFR 35.33, in pertinent part, that the trustee of the DTF may use the DTF assets only to "[s]atisfy the liability of a utility for decommissioning costs of the nuclear power plant to which the [DTF] relates as provided by [18 CFR] 35.32; and [p]ay administrative costs and other incidental expenses, including taxes, of the [DTF] as provided by [18 CFR] 35.32."[2] By prohibiting the use of the assets of a DTF to fund the costs of decommissioning nuclear power plants other than the nuclear power plant to which the DTF relates, these regulations would preclude the reallocation of surplus funds that is proposed by TVA with its requested exemption. TVA, though, as a Federally owned corporation, is exempt from these regulations (16 U.S.C. 824(f)). Therefore, the requested exemption is not precluded by any other prohibition of law and is, thus, authorized by law.

No Undue Risk to the Public Health and Safety

The underlying purpose of the NRC's decommissioning rules is to provide reasonable assurance that adequate funds will be available to complete decommissioning and thus protect the public and the environment (61 FR 39278, 39281; July 29, 1996). The NRC has determined by rule at 10 CFR 50.75 that, for power reactor licensees, reasonable assurance of funds for decommissioning is demonstrated when a power reactor licensee covers, using one of the methods of 10 CFR 50.75(e), including the external sinking fund method used by TVA, an amount which may be more, but not less, than the amount stated in the table in 10 CFR 50.75(c)(1) adjusted using a rate at least equal to that stated in 10 CFR 50.75(c)(2). This is known as the formula amount. This reasonable assurance is then maintained by the requirement that each power reactor licensee report to the NRC every two years on, among other things, the updated formula amount, the amount of decommissioning funds accumulated to the end of the calendar year, the schedule of the annual amounts remaining to be collected, and, if necessary, plans for adjusting levels of funds assured for decommissioning to demonstrate that a reasonable level of assurance will be provided that funds will be available when needed to cover the cost of decommissioning. Reasonable assurance is also maintained by restricting disbursements or payments from a DTF, other than for payment of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, to expenses for legitimate decommissioning activities. Based on this regulatory structure, there is no undue risk to the public health and safety when a power reactor licensee covers by the external sinking fund method an amount greater than or equal to the formula amount.

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[1] As support for its request, TVA cited a letter from NRC to Arizona Public Service Company, "Palo Verde Nuclear Generating Station, Unit 1—Decommissioning Trust Fund Balance (TAC No. MB3158)," December 11, 2001 (ADAMS Accession No. ML013340484) and a letter from NRC to Southern California Edison Company, "San Onofre Nuclear Generating Station, Units 2 and 3—Exemptions from the Requirements of 10 CFR part 50, Sections 50.82(a)(8)(i)(A) and Section 50.75(h)(2) (TAC Nos. MF3544 and MF3545)," September 5, 2014 (ADAMS Accession No. ML14101A132).

[2] The NRC's regulations recognize the applicability of such non-NRC rules to power reactor licensees by stating in 10 CFR 50.75(a) that, "[f]unding for the decommissioning of power reactors may also be subject to the regulation of Federal or State Government agencies (*e.g.*, Federal Energy Regulatory Commission (FERC) and State Public Utility Commissions) that have jurisdiction over rate regulation. The requirements of this section . . . are in addition to, and not substitution for, other requirements, and are not intended to be used by themselves or by other agencies to establish rates."

The requested exemption to allow a one-time reallocation of surplus funds from the DTFs for SQN Units 1 and 2, to the DTFs for BFN Units 1, 2, and 3 and WBN Units 1 and 2 will not present an undue risk to the public health and safety because, as reallocated, each of these DTFs would separately satisfy the minimum formula amount with a projected excess available to address site-specific costs to decommission the facility. This was verified by the NRC staff, which independently performed a decommissioning funding assurance analysis for each unit, using the proposed DTF reallocation amounts. The analysis included an independent calculation of the formula amount for each unit using the equation and adjustment factor in 10 CFR 50.75(c) and the most recent labor and energy and waste burial data available from the U.S. Department of Labor, Bureau of Labor Statistics, and NUREG–1307, "Report on Waste Burial Charges" (ADAMS Accession No. ML13023A030), respectively, and an independent fund growth analysis through the permanent termination of operations (assuming an annual real rate of return of 5%, as allowed by 10 CFR 50.75(e)(1)(ii) and authorized by the TVA Board of Directors, TVA's rate-setting authority). In each calculation, the NRC staff found that the projected fund balance for each of the reallocated DTFs exceeded the NRC's formula amount, which is, by rule, the minimum requirement to demonstrate reasonable assurance of funds for decommissioning. Moreover, TVA has rate-setting authority and the requested exemption does not foreclose the option for ratepayer contributions in order to fund any potential future shortfalls. Therefore, the NRC staff concludes that there is reasonable assurance that the bulk amount of the funds necessary to complete radiological decommissioning will be available for each unit after the proposed reallocation and, thus, that the requested exemption will not present an undue risk to the public health and safety.

Consistent With the Common Defense and Security

The requested exemption would grant a one-time exemption from the requirements of 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8) to allow the reallocation of surplus funds from the DTFs for SQN Units 1 and 2 to the DTFs for BFN Units 1, 2, and 3 and WBN Units 1 and 2. Neither the regulation nor the proposed exemption has any relation to security issues. Therefore, the common defense and security is not impacted by the requested exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. As explained above, the underlying purpose of the NRC's decommissioning rules is to provide reasonable assurance that adequate funds will be available to complete decommissioning. This underlying purpose is achieved by requiring power reactor licensees to cover, using one of the methods of 10 CFR 50.75(e), an amount which may be more, but not less, than the formula amount, to report biennially regarding the amount covered and whether adjustment is necessary, and to make disbursements or payments from a DTF only for decommissioning activities. Under the particular circumstances, however, prohibiting the proposed reallocation of funds is not necessary to achieve the underlying purpose of the decommissioning regulations of maintaining reasonable assurance that adequate funds will be available to complete decommissioning.

The TVA proposed to reallocate funds from the DTFs for SQN Units 1 and 2 to the DTFs for BFN Units 1, 2, and 3 and WBN Units 1 and 2. Although this would be prohibited by a strict interpretation of the NRC's decommissioning rules, such a prohibition is not necessary to achieve the underlying purpose of those rules because, as reallocated, each of the DTFs would separately satisfy the minimum formula amount with a projected excess available to address site-specific costs to decommission the facility. As discussed above, this was verified by the NRC staff, which independently performed a decommissioning funding assurance analysis for each unit, using the proposed DTF reallocation amounts, and found that the projected fund balance for each DTF, as reallocated, would exceed the NRC minimum funding assurance requirements. Therefore, the NRC staff concludes that prohibiting the proposed reallocation of funds through the application of 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8) would not be necessary to achieve the underlying purpose of these regulations; instead, the proposed reallocation would provide reasonable assurance that adequate funds will be available for the radiological decommissioning of the reactors.

Environmental Considerations

With respect to its impact on the quality of the human environment, the NRC has determined that the issuance of the exemption discussed herein meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of 10 CFR Chapter I is an action that is a categorical exclusion provided that: (i) There is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve those types of requirements identified in 10 CFR 51.22(c)(25)(vi).

The exemption allows the licensee to reallocate surplus funds from the DTFs for SQN Units 1 and 2 to the DTFs for BFN Units 1, 2, and 3 and WBN Units 1 and 2. Neither the regulation nor the exemption has any relation to the operation of the facilities. Therefore, the Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that approval of the exemption request involves no significant hazards consideration because it does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Similarly, as a result of the exemption, which is not related to facility operation, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite and there is no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.*, potential amount of radiation in an accident), nor mitigation. Therefore, there is no significant increase in the potential for or consequences from radiological accidents. Finally, the requirements for using DTFs for decommissioning activities from which the exemption is sought involve recordkeeping requirements, reporting requirements, or other requirements of an administrative, managerial, or organizational nature.

Based on the above, the NRC staff concludes that the exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

The NRC has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances pursuant to 10 CFR 50.12(a)(2)(ii) are present. Therefore, the NRC hereby grants TVA a one-time exemption from the requirements of 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8) to allow the requested reallocation of surplus funds from the DTFs for SQN Units 1 and 2 to the DTFs for BFN Units 1, 2, and 3 and WBN Units 1 and 2.

Dated at Rockville, Maryland, this 9th day of September 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–22486 Filed 9–16–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78826; File No. SR–MSRB–2016–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Establish the MSRB Academic Historical Transaction Data Product

September 13, 2016.

I. Introduction

On June 30, 2016, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of proposed amendments to establish an academic historical transaction data product (the "proposed rule change"). The proposed rule change was published for comment in the **Federal Register** on July 20, 2016.[3]

The Commission received two comment letters on the proposed rule change.[4] On August 29, 2016, the MSRB responded to the comments received by the Commission[5] and on August 31, 2016, the MSRB filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").[6] The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change

The proposed rule change consists of proposed amendments to the MSRB's facility for the Real-Time Transaction Reporting System ("RTRS") to establish an historical data product to provide institutions of higher education ("academic institutions") with post-trade municipal securities transaction data collected through RTRS ("MSRB Academic Historical Transaction Data Product," hereafter referred to as "RTRS Academic Data Product") for purchase.[7]

MSRB Rule G–14 requires dealers to report trade information to the RTRS on all executed transactions in municipal securities within 15 minutes of the time of trade, with limited exceptions.[8] The MSRB then makes much, but not all, of the reported data publicly available on the Electronic Municipal Market Access ("EMMA") Web site, through subscription services or historical data sets.[9] The data that are made available through the EMMA Web site do not include any information regarding the identity of the dealers that reported the transactions, and thus, according to the MSRB, limit a researcher's ability to fully understand secondary market trading practices.[10] According to the MSRB, the absence of any dealer identifiers in the EMMA data caused certain academics to request that the MSRB develop an enhanced version of RTRS trade data that includes dealer identifiers.[11] As noted in the Notice of Filing, following the requests from members of the academic community, the MSRB published the Request for Comment on Establishment of an Academic Historical Trade Data Product on July 16, 2015 (the "Request for Comment") to solicit comments from market participants on a proposed academic historical trade data product.[12]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 78323 (July 14, 2016) (the "Notice of Filing"), 81 FR 47211 (July 20, 2016).

[4] *See* Letters to Secretary, Commission, from Sean Davy, Managing Director, Capital Markets Division, and Leslie M. Norwood, Managing Director & Associate General Counsel, Municipal Securities Division, Securities Industry and Financial Markets Association ("SIFMA"), dated July 27, 2016 (the "SIFMA Letter"); and Mike Nicholas, Chief Executive Officer, Bond Dealers of America ("BDA"), dated August 9, 2016 (the "BDA Letter").

[5] *See* Letter to Secretary, Commission, from Carl E. Tugberk, Assistant General Counsel, MSRB, dated August 29, 2016 (the "MSRB Response Letter").

[6] *See* Letter to Secretary, Commission, from Carl E. Tugberk, Assistant General Counsel, MSRB, dated August 31, 2016 (the "MSRB Amendment Letter"), available at *https://www.sec.gov/comments/sr-msrb-2016-09/msrb201609-4.pdf*. In Amendment No. 1, the MSRB partially amended the text of the proposed rule change to conform the description of the RTRS Academic Data Product in the RTRS facility to the description intended by the MSRB and fully described in the Notice of Filing.

[7] *See* Notice of Filing.

[8] *Id.*

[9] *Id.*

[10] *Id.*

As stated in the Notice of Filing, after careful consideration of the comments received in response to the Request for Comment, the MSRB decided to make the RTRS Academic Data Product available only to academic institutions, to include anonymous dealer identifiers therein, and to populate the new data product with the same transactions included in the RTRS historical data sets currently available with the exclusion of list offering price and takedown transactions.[13] According to the MSRB, the proposed rule change will allow the MSRB to provide academics with trade data that include anonymous dealer identifiers while providing protections against the potential for reverse engineering of trade data.[14] With respect to protecting against reverse engineering, the MSRB stated in the Notice of Filing that any academic institution that wishes to obtain the RTRS Academic Data Product will have to agree: (1) Not to attempt to attempt to reverse engineer the identity of any dealer; (2) not to redistribute the data in the RTRS Academic Data Product; (3) to disclose each intended use of the data; (4) to ensure that any data presented in work product be sufficiently aggregated so as to prevent reverse engineering of any dealer or transaction; and (5) to return or destroy the data if the agreement is terminated.[15]

The MSRB stated in the Notice of Filing that the effective date of the proposed rule change will be announced in a regulatory notice to be published no later than 90 days from the date of this Order, and such effective date will be no later than 270 days following publication of the regulatory notice announcing Commission approval of the proposed rule change.[16]

III. Summary of Comments Received and MSRB's Responses to Comments

As noted previously, the Commission received two comment letters on the proposed rule change, and the MSRB Response Letter. One commenter—SIFMA—generally supported the proposed rule change, while the other commenter—BDA—generally opposed the proposed rule change.

While generally supportive of the proposed rule change, SIFMA expressed the view that the MSRB could make modifications to provide additional protections against the potential for reverse engineering the data without impeding its goals of promoting academic access and research.[17] SIFMA stated that the potential impact of reverse engineering could include deciphering a dealer's trading strategies and revealing confidential business information relating to specific client transactions.[18]

BDA, however, argued that the proposed rule change would expose dealers and their customers to unnecessary risks.[19] For example, BDA stated that "[i]t is very likely that, as a consequence of this proposal, private and non-educational entities will end up possessing full trade history including dealer names for every trade released." [20]

SIFMA and BDA offered differing views on the MSRB's efforts to mitigate the risk of reverse engineering of the historical trade data provided to academics. SIFMA approved of the MSRB's decision to exclude list offering price and takedown transactions from the data product and noted that such exclusion would mitigate the risk of reverse engineering.[21] SIFMA also acknowledged that the proposed aging period of 36 months (expanded from 24 months in the Request for Comment) would help reduce the risk of reverse engineering, but thought that an aging period of no less than 48 months would be more appropriate.[22] BDA also acknowledged that excluding list offering price and takedown transactions from the data product, expanding the aging period, and masking dealer identifiers would make reverse engineering more difficult, but ultimately concluded that these measures were not sufficient to reduce the risk of reverse engineering to an acceptable level.[23]

With respect to protecting dealer identities, both SIFMA and BDA reiterated their respective suggestions that the MSRB make the transaction data available according to groupings of comparable dealers instead of on an individual level, arguing that masked dealer identifiers might not effectively protect dealer identities.[24]

SIFMA and BDA also offered suggestions regarding strengthening and enforcing the proposed user agreements. SIFMA urged the MSRB to develop "robust operational frameworks around the execution and ongoing oversight of user agreements . . . [in order to] further mitigate concerns of reverse engineering and information leakage." [25] BDA stated that although the proposed user agreements are designed to prevent the redistribution of data, federal and state freedom of information ("FOIA") laws could defeat such intention if the transaction data is held by a public university and classified as a public record.[26] In addition, BDA raised concerns about data security, suggesting that the data could be subject to hacking or data theft during transmission or when held by an institution of higher education.[27]

In response to these comments, the MSRB stated that it "continues to believe that the proposed rule change strikes the appropriate balance between addressing risks regarding potential reverse engineering with facilitating the ability of academic researchers to study the market for municipal securities." [28] With respect to SIFMA's comments, the MSRB noted in its response that "SIFMA's comments are substantially similar to previous comments submitted in response to the Request for Comment" and that the MSRB addressed those comments in the Notice of Filing.[29]

In response to BDA's data security-related comments, the MSRB stated that it "understands and appreciates" BDA's data security concerns and agrees that it cannot guarantee the security of data provided to academics through the proposed RTRS Academic Data Product.[30] Nonetheless, the MSRB then noted its belief that the terms of the user agreements relating to the RTRS Academic Data Product will "mitigate those risks." [31] To that end, the MSRB stated that it expects each user agreement to include the following:

> (1) a prohibition on reverse engineering; (2) a provision requiring the use of commercially

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[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *See* SIFMA Letter.

[18] *Id.*

[19] *See* BDA Letter.

[20] *Id.*

[21] *See* SIFMA Letter; *see also* MSRB Amendment Letter.

[22] *See* SIFMA Letter.

[23] *See* BDA Letter; *see also* MSRB Amendment Letter.

[24] *Id.; see also* SIFMA Letter. The MSRB addressed these comments in the Notice of Filing.

[25] *See* SIFMA Letter.

[26] *See* BDA Letter.

[27] *Id.*

[28] *See* MSRB Response Letter.

[29] *Id.*

[30] *Id.*

[31] *Id.*

reasonable measures to protect data, including, for example, the use of user IDs and passwords, and other forms of entitlements to gain access to the data; (3) a definition of the term 'Internal User' to clarify to whom access to the data may be provided; and (4) a requirement that users have reasonable security procedures in the place(s) where the data are used, accessed, processed, stored, and/or transmitted to ensure the data remain secure from unauthorized access, including specific requirements regarding physical and logical access, encryption, and network and system security.[32]

In addition to contractual data security measures like those listed above, the MSRB also stated its intention to encrypt data delivered to users.[33]

In response to BDA's FOIA law-related comments, the MSRB recognized the possibility that certain recipients of RTRS Academic Data Product data might be subject to FOIA laws that could require the disclosure of certain trade data but, notwithstanding such risk, noted that federal and state FOIA laws include a variety of exemptions that would likely prevent disclosure of data delivered to users of the RTRS Academic Data Product.[34] The MSRB also stated its expectation that the user agreements "will require academic institutions to notify the MSRB of any . . . requests under federal or state FOIA [l]aws prior to any disclosure, claim any and all applicable exemptions from such requests and provide the MSRB the opportunity to seek an injunction, protective order, or confidential treatment, and limit any disclosure ultimately required to the minimum legally necessary." [35]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by Amendment No. 1, the comments letters received, and the MSRB Response Letter. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[36] which requires, among other things that the rules of the MSRB be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products and, in general, to protect investors, municipal entities, obligated persons, and the public interest. The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market in municipal securities by enabling subscribers to the RTRS Academic Data Product to better understand the pricing practices and trading behaviors of participants in the municipal securities market and thereby facilitate higher quality research and analysis of the municipal securities market. Furthermore, the Commission believes that by enhancing transparency in the municipal securities market, the proposed rule change is reasonably designed to protect investors, municipal entities, obligated persons, and the public interest.

In approving the proposed rule change, the Commission has also considered the impact of the proposed rule change on efficiency, competition, and capital formation.[37] The Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

For the reasons noted above, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the proposed rule change, as modified by Amendment No.1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or

- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2016–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2016–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2016–09 and should be submitted on or before October 11, 2016.

VI. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of Amendment No. 1 in the **Federal Register**. As discussed above, Amendment No. 1 partially amends the text of the proposed rule change to conform the description of the RTRS Academic Data Product in the RTRS facility to the description intended by the MSRB.[38] The proposed rule change, as described in the Notice of Filing, contemplated the exclusion of list offering price and takedown transactions; however, the proposed text of the proposed rule change did not include any reference to such exclusion.[39] According to the MSRB, it was the MSRB's intent to include the exclusion in the proposed rule change, thus the MSRB submitted Amendment No. 1 in order to conform the proposed description of the RTRS Academic Data Product in the RTRS facility with the description thereof in the Notice of Filing.[40]

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[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] 15 U.S.C. 78*o*–4(b)(2)(C).

[37] 15 U.S.C. 78c(f).

[38] *Supra* note 6.

As noted by the MSRB, Amendment No. 1 is consistent with the purpose of the proposed rule change and does not raise any significant new issues not already addressed by commenters.[41]

For the foregoing reasons, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[42] that the proposed rule change, as modified by Amendment No. 1 (SR–MSRB–2016–09) be, and hereby is, approved on an accelerated basis.

For the Commission, pursuant to delegated authority.[43]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22419 Filed 9–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78827; File No. SR–BOX–2016–42]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility To Specify That All Complex Order Transactions Executed Through the Exchange's Auction Mechanisms Will Be Subject to Section I (Exchange Fees) and II (Liquidity Fees and Credits)

September 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2016, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule to specify that all Complex Order transactions executed through the Exchange's auction mechanisms will be subject to Section I (Exchange Fees) and II (Liquidity Fees and Credits) of the BOX Fee Schedule. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section III (Complex Order Transaction Fees) to specify that all Complex Order transactions executed through the Exchange's auction mechanisms will be subject to Section I (Exchange Fees) and II (Liquidity Fees and Credits) of the BOX Fee Schedule.[5] The Exchange recently amended its rules to permit Complex Order[6] transactions to execute through the Facilitation Auction mechanism[7] and the Exchange is submitting this filing to clarify the fees that are applicable to these transactions.

Generally, Complex Order transactions are subject to the fees and credits set forth in Section III (Complex Order Transaction Fees) of the BOX Fee Schedule while transactions executed through the Facilitation and Solicitation auction mechanisms are subject to Sections I (Exchange Fees) and II (Liquidity Fees and Credits). The Exchange proposes to add language that clarifies that Complex Order transactions executed through the COPIP and Facilitation auction mechanism[8] will be subject to Sections I (Exchange Fees) and II (Liquidity Fees and Credits).

Under Section I (Exchange Fees), the Exchange proposes the following fees for Complex Order transactions executed through the Facilitation auction mechanism. For Agency Orders[9] and Facilitation Orders, Public Customer, Professional Customers and Brokers Dealers and Market Makers will not be charged. For Responses in the Facilitation Auction, Public Customers will be charged $0.15, Professional Customer and Broker Dealers will be charged $0.27, and Market Makers are charged $0.20.

The Exchange then proposes to treat Complex Order transactions executed through the Facilitation mechanisms in the same manner as single legged Facilitation transactions for liquidity fees and credits, which are applied in addition to any applicable exchange fees as described in Section I of the Fee

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[39] *See* Notice of Filing.

[40] *See* MSRB Amendment Letter.

[41] *Id.*

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange notes that it intends to adjust to certain Facilitation and Solicitation fees and credits in the BOX Fee Schedule effective September 1, 2016.

[6] As defined in Rule 7240(a)(5), the term "Complex Order" means any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

[7] *See* Securities Release No. 78444 (July 29, 2016), 81 FR 51533 (August 4, 2016) (SR–BOX–2016–37).

[8] BOX's auction mechanisms include the Price Improvement Period ("PIP"), Complex Order Price Improvement Period ("COPIP"), Facilitation Auction and Solicitation Auction. The Exchange notes that Complex Orders are currently not permitted in the Solicitation Auction mechanism.

[9] An Agency Order is the block-size order that an Order Flow Provider "OFP" seeks to facilitate as agent through the Facilitation Auction or Solicitation Auction mechanism.

Schedule. The fee structure for liquidity fees and credits for Complex Orders executed through the Facilitation mechanisms will be as follows:

Facilitation and solicitation transactions	Fee for adding liquidity (all account types)	Credit for removing liquidity (all account types)
Non-Penny Pilot Classes	$0.95	($1.00)
Penny Pilot Classes	0.40	(0.45)

Complex Order transactions executed through the Facilitation mechanism will be assessed a "removal" credit only if the Agency Order does not trade with their contra order. Responses to Complex Order transactions executed through the Facilitation mechanism shall be charged the "add" fee.

Finally, the Exchange is proposing to make additional non-substantive changes to the Fee Schedule. Specifically, the Exchange is renumbering certain footnotes to accommodate the above proposed changes to the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposal to specify that Complex Order transactions executed through the Exchange's COPIP and Facilitation mechanisms are subject to fees and credits in Sections I (Exchange Fees) and II (Liquidity Fees and Credits) is reasonable, equitable and not unfairly discriminatory. The new ability for Complex Order transactions to execute through the Facilitation Auction mechanism is similar to Complex Orders executing through the COPIP. As such, the Exchange believes it is reasonable for the fees for Complex Orders executed through the Facilitation mechanism to mimic the current COPIP transaction fees.[11] In the BOX Fee Schedule, COPIP transactions are not subject to Section III (Complex Order Transactions) and are instead treated the same as PIP transactions. Additionally, the Exchange believes the proposed fees will allow the Exchange to be competitive with other exchanges and to apply fees and credits in a manner that is equitable among all BOX Participants. The proposed fees are intended to attract Complex Orders to the Exchange by offering market participants incentives to submit their Complex Orders through the Exchange's Facilitation auction mechanism. The Exchange believes it is appropriate to provide incentives for market participants to submit orders to the auction mechanisms, resulting in greater liquidity and ultimately benefiting all Participants trading on the Exchange.

Exchange Fees

Currently, the Exchange does not charge any market participant a fee for their Facilitation Orders; however the Exchange charges varying fees for Responses in the Facilitation mechanism depending on the account type of the response. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge higher exchange fees for responders to Complex Orders in the Facilitation auction than for initiators of these orders. The Exchange believes its proposed fees are reasonable as they are identical to the fees charged for single legged orders executed through the Facilitation auction mechanism on the Exchange.[12]

The Exchange also believes that charging Professional Customers and Broker Dealers higher fees than Public Customers for Complex Order Responses in the Facilitation auction mechanism is equitable and not unfairly discriminatory. Professional Customers, while Public Customers by virtue of not being Broker Dealers, generally engage in trading activity more similar to Broker Dealer proprietary trading accounts. The Exchange believes that the higher level of trading activity from these Participants will draw a greater amount of BOX system resources, and the Exchange aims to recover its costs by assessing Professional Customers and Broker Dealers higher fees for these orders.

The Exchange believes it is equitable and not unfairly discriminatory to charge Public Customers less than Market Makers, Broker Dealers and Professional Customers for their Complex Order Responses to the Facilitation Auction mechanism. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for Public Customer benefit. The Exchange believes that charging lower fees to Public Customers is reasonable and, ultimately, will benefit all Participants trading on the Exchange by attracting Public Customer order flow.

Finally, the Exchange believes it is equitable and not unfairly discriminatory for BOX Market Makers to be assessed lower fees than Professional Customers and Broker Dealers for Complex Order Responses in the Facilitation auction mechanism because of the significant contributions to overall market quality that Market Makers provide. Specifically, Market Makers can provide higher volumes of liquidity and lowering their fees will help attract a higher level of Market Maker order flow to the BOX Book and create liquidity, which the Exchange believes will ultimately benefit all Participants trading on BOX.

Liquidity Fees and Credits

The Exchange believes the proposed liquidity fees and credits for Complex Orders executed through the Facilitation auction mechanism are equitable and not unfairly discriminatory. Specifically, the Exchange believes the liquidity fees and credits fee structure aims to attract order flow to the Facilitation mechanism, potentially providing greater liquidity within the overall BOX Market to the benefit of all BOX market participants. The Exchange notes that the proposed fees and credits for Complex Order transactions executed through the Facilitation mechanism offset one another in any particular transaction. The result is that BOX will collect a fee from Participants that add liquidity on BOX and credit another Participant an equal amount for removing liquidity. Stated otherwise, the collection of these liquidity fees will not directly result in revenue to BOX, but will simply allow BOX to provide the credit incentive to Participants in order to attract order flow. The Exchange believes it is appropriate to provide incentives to market participants to direct order flow to remove liquidity from BOX, similar to various and widely-used, exchange-sponsored payment for order flow programs. Further, the Exchange believes that fees for adding liquidity on BOX will not deter Participants from seeking to add liquidity to the BOX market so that they may interact with those participants seeking to remove liquidity.

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[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* Securities Exchange Release No. 71312 (January 15, 2014), 79 FR 3649 (January 22, 2014) (SR–BOX–2014–01), where the Exchange established fees for Complex Orders submitted to the PIP in the BOX Fee Schedule.

[12] *See* BOX Fee Schedule Sections I.C. and II.B.

The Exchange continues to believe it is reasonable to establish different fees and credits for Facilitation transactions in Penny Pilot Classes compared to transactions in Non-Penny Pilot Classes. The Exchange makes this distinction throughout the BOX Fee Schedule, including the liquidity fees and credits for PIP and COPIP Transactions. The Exchange believes it is reasonable to establish higher fees and credits for Non-Penny Pilot Classes because these Classes are typically less actively traded and have wider spreads. The Exchange believes that offering a higher rebate will incentivize order flow in Non-Penny Pilot issues on the Exchange, ultimately benefitting all Participants trading on BOX.

Further, the Exchange continues to believe it is reasonable, equitable and not unfairly discriminatory to only assess liquidity fees and credits on Agency Orders that do not trade with their contra order, and the Responses to these Orders. As stated above, liquidity fees and credits are meant to incentivize order flow, and the Exchange believes incentives are not necessary for internalized orders in these mechanisms that only trade against their contra order. Additionally, other Exchanges also make this distinction in their Facilitation auction mechanism.[13]

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing exchanges. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to provide greater specificity and precision within the Fee Schedule with respect to the fees that will be applicable to Complex Order transactions executed through the Exchange's Facilitation auction mechanism.

The Exchange believes that adopting these fees will not impose a burden on competition among various Exchange Participants. The proposed fees are meant to mimic the fees currently assessed for single legged orders executed through the Facilitation auction mechanism. Submitting an order through an auction mechanism is entirely voluntary and Participants can determine which type of order they wish to submit, if any, to the Exchange.

Further, the Exchange believes that the proposed fees will enhance competition between exchanges because it is designed to allow the Exchange to better compete with other exchanges for Complex Order flow. In this regard, the new feature which allows Complex Order transactions to execute through the Facilitation mechanism is being introduced by the Exchange and BOX is unable to absolutely determine the impact that the proposed fees proposed herein will have on trading. That said, however, the Exchange believes that the proposed fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[14] and Rule 19b–4(f)(2) thereunder,[15] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2016–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–42, and should be submitted on or before October 11, 2016.

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[13] *See* ISE Schedule of Fees at *http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.* Under the ISE Fee Schedule, in the equivalent of Penny Pilot Classes, the initiator receives a "break-up" rebate only for contracts that are submitted to the Facilitation and Solicitation mechanisms that do not trade with their contra order. The responder fee for these Orders is only applied to any contracts for which the rebate is provided.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22420 Filed 9–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78819; File No. SR–BX–2016–049]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Tiers Related to SPY Options

September 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 31, 2016, NASDAQ BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Pricing at Chapter XV Section 2, entitled “BX Options Market—Fees and Rebates,” which governs pricing for BX members using the BX Options Market (“BX Options”). The Exchange proposes to modify fees and rebates (per executed contract) for options overlying Standard and Poor’s® Depositary Receipts/SPDRs® (“SPY”)[3] to: (a) Adopt two additional rebate Tiers applicable to Rebate to Remove Liquidity, and modify the existing volume criteria and rebate amounts per Tier; and (b) modify Note 1 through Note 6; within the SPY Options Tier Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on September 1, 2016.

The text of the proposed rule change is available on the Exchange’s Web site at *http://nasdaqbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Chapter XV, Section 2, to modify fees and rebates (per executed contract) for options overlying SPY to: (a) Adopt two additional rebate Tiers applicable to Rebate to Remove Liquidity, and modify the existing volume criteria and rebate amounts per Tier; and (b) modify Note 1 through Note 6; within the SPY Options Tier Schedule. The Tiers, described below along with the Notes, together make up the “SPY Options Tier Schedule.” The proposed SPY Options Tier Schedule rebates would apply to Customers[4] that remove liquidity from Customers, Non-Customers,[5] BX Options Market Makers,[6] or Firms.[7]

Currently, Chapter XV, Section 2, subsection (1), has a SPY Options Tier Schedule that has three Tiers and six Notes. The Exchange proposes in the current filing to modify the Tiers and Notes to give BX Participants (“Participants”) additional rebate and fee options, and each specific change is described in detail below.

Change 1—Penny Pilot Options: In SPY Options Tier Schedule Adopt Two Additional Rebate Tiers and Modify Existing Volume Criteria and Rebate Amounts per Tiers [sic]

In Change 1, the Exchange proposes modifications to its current SPY Options Tier Schedule[8] to indicate that this particular schedule will have two additional tiers for the Rebate to Remove Liquidity, namely Tiers 4 and 5. The Exchange proposes also to modify existing Tiers 1 through 3. By doing so, the Exchange proposes to have a Rebate to Remove Liquidity of $0.01 to $0.52 per contract over five Tiers, whereas now the rebates are $0.10 to $0.51 per contract over three Tiers. The proposed five Tier structure for Rebate to Remove Liquidity offers a more graduated Tier structure to further incentivize Participants to bring SPY Options volume to the Exchange.

Today, Tier 1 to the Rebate to Remove Liquidity indicates that a Participant [sic] removes less than 1500 SPY Options contracts per day in the customer range can earn a rebate of $0.10 per contract. The Exchange proposes to modify Tier 1 so that going forward a Participant that removes less than 500 SPY Options contracts per day in the customer range can earn a rebate of $0.01 per contract.

Today, Tier 2 to the Rebate to Remove Liquidity indicates that a Participant [sic] removes 1500 to not more than 2999 SPY Options contracts per day in the customer range can earn a rebate of $0.42 per contract. The Exchange proposes to modify Tier 2 to the Rebate to Remove Liquidity so that going forward a Participant that removes 500 to not more than 999 SPY Options contracts per day in the customer range can earn a rebate of $0.10 per contract.

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options overlying SPY are based on the SPDR exchange-traded fund (“ETF”), and are Penny Pilot Options. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index. “SPDR®,” “Standard & Poor’s®,” “S&P®,” “S&P 500®,” and “Standard & Poor’s 500” are registered trademarks of Standard & Poor’s Financial Services LLC. The Penny Pilot was established in June 2012 and extended through 2016. *See* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving BX option rules and establishing Penny Pilot); and 78036 (June 10, 2016), 81 FR 39308 (June 16, 2016) (SR–BX–2016–021) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016).

[4] The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Chapter I, Section 1(a)(48)). BX Chapter XV. This is known as being marked in the Customer range.

[5] Note 1 to Chapter XV, Section 2 states: “[1]A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.”

[6] The term “BX Options Market Maker” or (“M”) means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security. BX Chapter XV.

[7] The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. BX Chapter XV.

[8] The Penny Pilot Options Tier Schedule, Select Symbols Options Tier Schedule, and Non-Penny Pilot Options Tier Schedule pricing will remain unchanged.

Today, Tier 3 to the Rebate to Remove Liquidity indicates that a Participant [sic] removes more than 2999 SPY Options contracts per day in the customer range can earn a rebate of $0.51 per contract. The Exchange proposes to modify Tier 3 to the Rebate to Remove Liquidity so that going forward a Participant that removes 1000 to not more than 1999 SPY Options contracts per day in the customer range can earn a rebate of $0.35 per contract.

The Exchange also proposes two new Tiers that are similar in structure to the existing Tiers. The Exchange proposes new Tier 4 applicable to Rebate to Remove Liquidity so that a Participant that removes 2000 to not more than 3999 SPY Options contracts per day in the customer range can earn a rebate of $0.43 per contract. The Exchange also proposes new Tier 5 applicable to Rebate to Remove Liquidity so that a Participant that removes more than 3999 SPY Options contracts per day in the customer range can earn a rebate of $0.52 per contract. Thus, instead of offering Participants rebates of $0.10 to $0.51 per contract over three Tiers, as proposed Participants will be offered rebates of $0.01 to $0.52 per contract over five Tiers.

The Exchange believes that proposed Change 1 is reasonable because, by more finely tuning the rebates to volume (*e.g.*, $0.01 per contract rebate if remove less than 500 SPY Contracts per lowest Tier 1; and $0.52 per contract if remove more than 3999 SPY Contracts per highest Tier 5), the proposed five Tier system will serve to incentivize Participants to remove more SPY Options contracts from the Exchange.

As proposed, the Rebate to Remove Liquidity, which is in the SPY Options Tier Schedule in Chapter XV, Section 2 subsection (1), will read as follows:

SPY OPTIONS TIER SCHEDULE

	Rebate to Remove Liquidity (per contract)	
	Applied to: Customer	
	Non-Customer, BX Options Trading with: Market Maker, Customer, or Firm	
Tier 1	Participant removes less than 500 SPY Options contracts per day in the customer range	$0.01
Tier 2	Participant removes 500 to not more than 999 SPY Options contracts per day in the customer range	0.10
Tier 3	Participant removes 1000 to not more than 1999 SPY Options contracts per day in the customer range	0.35
Tier 4	Participant removes 2000 to not more than 3999 SPY Options contracts per day in the customer range	0.43
Tier 5	Participant removes more than 3999 SPY Options contracts per day in the customer range	0.52

Change 2—Penny Pilot Options: SPY Option Tier Schedule Modify Note 1 Through Note 6

There are currently six Notes regarding certain fees to add and remove liquidity within the SPY Options Tier Schedule. The language of each of these Notes will remain the same, but commensurate with the above-discussed Tier modifications the Exchange proposes to modestly change the fees and rebates in the Notes.

Today, Note 1 indicates that Firm fee to add liquidity and fee to remove liquidity in SPY Options will be $0.33 per contract, regardless of counterparty. The Exchange proposes to modify Note 1 so that going forward the Firm fee to add liquidity and fee to remove liquidity in SPY Options will be $0.41 per contract, regardless of counterparty.

Today, Note 2 indicates that Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be $0.46 per contract, regardless of counterparty. The Exchange proposes to modify Note 2 so that going forward the Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be $0.44 per contract, regardless of counterparty.

Today, Note 3 indicates that BX Options Market Maker fee to remove liquidity in SPY Options will be $0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker. The Exchange proposes to modify Note 3 so that going forward the BX Options Market Maker fee to remove liquidity in SPY Options will be $0.44 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.

Today, Note 4 indicates that Customer fee to add liquidity in SPY Options when contra to another Customer will be $0.33 per contract. There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.[9] The Exchange proposes to modify Note 4 so that going forward the Customer fee to add liquidity in SPY Options when contra to another Customer will be $0.38 per contract.

Today, Note 5 indicates that BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be $0.44 per contract when trading with Customer. The Exchange proposes to modify Note 5 so that going forward the BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be $0.39 per contract when trading with Customer.

Today, Note 6 indicates that BX Options Market Maker fee to add liquidity in SPY Options will be $0.10 per contract when trading with Firm, BX Options Market Maker or Non Customer. The Exchange proposes to modify Note 6 so that going forward the BX Options Market Maker fee to add liquidity in SPY Options will be $0.14 per contract when trading with Firm, BX Options Market Maker or Non Customer.

The Exchange believes that proposed Change 2, together with the effort in proposed Change 1 to more finely tune the Rebate to Remove Liquidity to volume Tiers, is reasonable in light of the overall Exchange effort to incentivize Participants to bring SPY Options liquidity to the Exchange.

As proposed, Notes 1 through 6 to the Rebates to Remove Liquidity, which are in the SPY Options Tier Schedule in Chapter XV, Section 2 subsection (1), will read as follows:

- *Note 1:* Firm fee to add liquidity and fee to remove liquidity in SPY Options will be $0.41 per contract, regardless of counterparty.
- *Note 2:* Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be $0.44 per contract, regardless of counterparty.
- *Note 3:* BX Options Market Maker fee to remove liquidity in SPY Options will be $0.44 per contract when trading

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[9] This no fee or rebate language remains in Note 4 without change.

with Firm, Non-Customer, or BX Options Market Maker.

- *Note 4:* Customer fee to add liquidity in SPY Options when contra to another Customer will be $0.38 per contract. There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.
- *Note 5:* BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be $0.39 per contract when trading with Customer.
- *Note 6:* BX Options Market Maker fee to add liquidity in SPY Options will be $0.14 per contract when trading with Firm, BX Options Market Maker or Non Customer.

The Exchange is proposing the changes because it believes that they will provide even greater incentives for execution of SPY Options contracts on the BX Options Market. The Exchange believes that its proposal should provide increased opportunities for participation in SPY Options executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[10] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Attracting order flow to the Exchange benefits all Participants who have the opportunity to interact with this order flow.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[12]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission*[13] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[14] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[15]

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."[16] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal should provide increased opportunities for participation in SPY Options executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

Change 1—Penny Pilot Options: In SPY Options Tier Schedule Adopt Two Additional Rebate Tiers and Modify Existing Volume Criteria and Rebate Amounts per Tiers [sic]

In Change 1, the Exchange proposes modifications to its current SPY Options Tier Schedule to indicate that this particular schedule will have additional Tiers 4 and 5 to Rebate to Remove Liquidity. The Exchange proposes also to modify existing Tiers 1 through 3 to Rebate to Remove Liquidity. These proposed changes will enable rebates of $0.01 to $0.52 per contract over five Tiers in terms of Rebate to Remove Liquidity, whereas now the rebates are $0.10 to $0.51 per contract over three Tiers. The proposed five Tier structure for Rebate to Remove Liquidity is reasonable because it offers a more graduated Tier structure to further incentivize Participants to bring SPY Options volume to the Exchange. The Exchange believes it is equitable and not unfairly discriminatory to modify the Tiers because they will be applied uniformly to all similarly situated Participants. This is further discussed below.

Tier 1 would offer the smallest Rebate to Remove Liquidity ($0.01 per contract) for removing the smallest number or [sic] SPY Options contracts, and the Tiers would be graduated so that Tier 5 would offer the largest Rebate to Remove Liquidity ($0.52 per contract) for removing the largest number or [sic] SPY Options contracts. Going forward, as discussed in detail above, the proposed Tiers would be as follows: Tier 1—a Participant that removes less than 500 (now 1,500) SPY Options contracts per day in the customer range can earn a rebate of $0.01 per contract (now $0.10 per contract); Tier 2—a Participant that removes 500 to not more than 999 (now 1500 to not more than 2999) SPY Options contracts per day in the customer range can earn a rebate of $0.10 per contract (now $0.42 per contract); Tier 3—a Participant that removes 1000 to not more than 1999 (now more than 2999) SPY Options contracts per day in the customer range can earn a rebate of $0.35 per contract (now $0.51 per contract); new Tier 4—a Participant that removes 2000 to not more than 3999 SPY Options contracts per day in the customer range can earn a rebate of $0.43 per contract; and new Tier 5—a Participant that removes more than 3999 SPY Options contracts per day in the customer range can earn a rebate of $0.52 per contract. Thus, as proposed, Participants will be offered rebates of $0.01 per contract to $0.52 per contract over five Tiers.

The Exchange believes that proposed Change 1 is reasonable because, by more finely graduating the Customer Rebate to Remove Liquidity to volume (*e.g.,* $0.01 rebate per contract if remove less than 500 SPY Contracts per lowest Tier 1; and $0.52 rebate per contract if remove more than 3999 SPY Contracts per highest Tier 5), the proposed five Tier system will serve to further incentivize Participants to remove more

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[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7–10–04) ("Regulation NMS Adopting Release").

[13] *Net Coalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[14] *See id.* At 534–535.

[15] *See id.* At 537.

[16] *See id.* At 539 (quoting Securities Exchange Act Commission at [sic] Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782–74783 (December 9, 2008) (SR–NYSEArca–2006–21)).

SPY Options order flow in the customer range on the Exchange. The Exchange believes that proposed Change 2 [sic] is equitable and not unfairly discriminatory because the new Tiers and graduated Tier modifications will be applied uniformly to all similarly situated Participants.

SPY Options are among the very highest volume options traded on the Exchange. The Exchange believes that the proposed new and modified Tiers to the Rebate to Remove Liquidity in the SPY Options Tier Schedule applicable to these high-volume options are reasonable because they continue to reflect a structure that is not novel in the options markets but rather is similar to that of other options markets and competitive with what is offered by other exchanges.[17] In addition, the Exchange believes that making changes to add Tiers applicable to the Customer in terms of Rebate to Remove Liquidity is reasonable because it encourages the desired Customer behavior by marking [sic] the Tier structure more graduated and attracting Customer interest to the Exchange. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Expanding SPY Option Tiers for Rebate to Remove Liquidity is reasonable because it encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.[18] The proposed Tiers applicable to the Rebate to Remove Liquidity in the SPY Options Tier Schedule clearly reflect the progressively increasing nature of Participant executions structured for the purpose of attracting order flow to the Exchange. That is, as discussed if a Participant removes more SPY Options contracts per day in the customer range, the Participant can earn higher rebates. For example, in the highest proposed SPY Options Tier 5 Rebate to Remove Liquidity, for which Participant must remove more than 3999 SPY Options contracts per day in the customer range, the Participant can earn the highest $0.52 rebate (per contract). And in the lowest proposed SPY Options Tier 1 Rebate to Remove Liquidity, for which Participant must remove less than 500 SPY Options contracts per day in the customer range, the Participant can earn the lowest $0.01 rebate (per contract).

Change 2—Penny Pilot Options: In SPY Option Tier Schedule Modify Note 1 Through Note 6

In Change 2 the Exchange proposes to modify six Notes regarding certain fees to add liquidity and fees to remove liquidity. The language of each of these Notes will remain the same, but the Exchange proposes to modestly increase or decrease the amount of the fees and rebates [sic] as discussed below. The Exchange believes that this is reasonable. The Exchange believes it is equitable and not unfairly discriminatory to update the Notes because they will be applied uniformly to all similarly situated Participants.

Going forward, as discussed in detail above, the proposed Notes would be as follows: Note 1—Firm fee to add liquidity and fee to remove liquidity in SPY Options will be $0.41 (now $0.33) per contract, regardless of counterparty; Note 2—Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be $0.44 (now $0.46) per contract, regardless of counterparty; Note 3—BX Options Market Maker fee to remove liquidity in SPY Options will be $0.44 (now $0.46) per contract when trading with Firm, Non-Customer, or BX Options Market Maker. [sic]; Note 4—Customer fee to add liquidity in SPY Options when contra to another Customer will be $0.38 (now $0.33) per contract; [19] Note 5—BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be $0.39 (today $0.44) per contract when trading with Customer; and Note 6—BX Options Market Maker fee to add liquidity in SPY Options will be $0.14 (now $0.10) per contract when trading with Firm, BX Options Market Maker or Non Customer.

The fee and rebate schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, and notes that unlike others (*e.g.,* Non-Customers) some market participants like BX Options Market Makers commit to various obligations. Despite the fact that certain BX Options Market Maker fees to add liquidity are proposed to be increased as discussed earlier, the BX Options Market Maker fees to add and remove will be lower as compared to other non-Customer market participants. Unlike other non-Customer market participants, BX Options Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[20] A BX Options Market Maker has the obligation to make continuous markets, engage in course [sic] of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course [sic] of dealings. Customers will continue to be assessed the lowest fees because Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that proposed Change 2, together with the effort in proposed Change 1 to more finely tune the Rebate to Remove Liquidity to volume Tiers, is reasonable in light of the overall Exchange effort to incentivize Participants to bring SPY Options liquidity to the Exchange. The Exchange believes that proposed Change 2 to modify the Notes applicable to SPY Options Tier Schedule is equitable and not unfairly discriminatory because it will be applied uniformly to all similarly situated Participants.[21]

The Exchange believes that by making the proposed changes it is incentivizing Participants to trade more SPY Options volume to the Exchange to further enhance liquidity in this market.

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[17] *See, e.g.,* the MIAX fee schedule at *https://www.miaxoptions.com/content/fees,* the BATS EDGX fee schedule at *http://www.bats.com/us/options/membership/fee_schedule/edgx/,* and the BOX fee schedule at *http://boxoptions.com/fee-schedule/.*

[18] *See, e.g.,* fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ Options Market ("NOM"), NASDAQ PHLX LLC ("Phlx"), and Chicago Board Options Exchange ("CBOE").

[19] The following language in Note 4 remains without change: There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.

[20] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5." [sic]

[21] Because the Notes are in the Rebate to Remove Liquidity section of the SPY Options Tier Schedule, the additional reasonable, equitable, and not unfairly discriminatory arguments immediately above in respect of proposed Change 1 are likewise applicable to proposed Change 2.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to make changes to its SPY Options fees and rebates to add new Tiers 4 and 5 and modify existing Tiers 1, 2, and 3 to Rebate to Remove Liquidity, and to adjust applicable Notes 1 through 6, will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply continuing its fees and rebates and enhancing Tiers with Notes applicable to Rebate to Remove Liquidity for SPY Options in order to attract trading such options on the Exchange and remain competitive in the current environment.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (*e.g.,* Customer, BX Options Market Maker, and Non-Customer) is reasonable. Customer activity, for example, enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, unlike others (*e.g.,* Non-Customers) each BX Options Market Maker commits to various obligations. These obligations include, for example, transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.

In this instance, the proposed changes to the fees and rebates for execution of contracts on the Exchange, and establishing SPY Options Tiers with Notes for such fees and rebates, do not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition from other exchanges.. [sic] If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–049, and should be submitted on or before October 11, 2016.

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[22] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22416 Filed 9–16–16; 8:45 am]

BILLING CODE 8011–01–P

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[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, September 22, 2016 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: September 15, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–22659 Filed 9–15–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32259; File No. 812–14602]

OFS Capital Corporation, et al.; Notice of Application

September 13, 2016.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the “Act”) and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and under rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (each, a “BDC”) and certain closed end investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: OFS Capital Corporation (“OFS BDC”); Hancock Park Corporate Income, Inc. (“Hancock BDC” and together with OFS BDC, the “Existing Regulated Funds”); OFS Capital Management, LLC (“OFS Adviser”); OFSI Fund V, LTD., OFSI Fund VI, LTD., and OFSI Fund VII, LTD. (each an “Existing Affiliated Fund”); and OFS SBIC I LP (the “Existing SBIC Subsidiary”).

FILING DATES: The application was filed on January 15, 2016, and amended on June 8, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 11, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090. Applicants: 10 S. Wacker Drive, Suite 2500, Chicago, Illinois 60606, Attention: Jeffrey A. Cerny.

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, at (202) 551–6773 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission’s Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants’ Representations

1. OFS BDC, a Delaware corporation, is organized as a closed-end management investment company that has elected to be regulated as a BDC under section 54(a) of the Act.[1] Applicants state that OFS BDC seeks to generate both current income and capital appreciation primarily through debt investments and, to a lesser extent, equity investments.

2. Hancock BDC, a Maryland corporation, was organized on December 8, 2015, for the purpose of operating as an externally managed, closed-end management investment company which will elect to be regulated as a BDC under section 54(a) of the Act. Structured as a private BDC, Hancock BDC seeks to generate current income and, to a lesser extent, capital appreciation primarily through debt investments and, to a lesser extent, equity investments.

3. OFS Adviser, a Delaware limited liability company, is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”) and serves as investment adviser to the Existing Regulated Funds.

4. Each of the Existing Affiliated Funds is a Cayman “collateralized loan obligation” fund for which OFS Adviser acts as the adviser pursuant to a collateral management agreement between the relevant Existing Affiliated Fund and OFS Adviser. The Existing Affiliated Funds’ portfolios are comprised predominantly of senior secured “club” and syndicated loans made to U.S. companies (both public and private). In reliance on the exclusion from the definition of “investment company” provided by section 3(c)(1) or 3(c)(7) of the 1940 Act,

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[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

none of the Affiliated Funds[2] are, or will be, registered under the 1940 Act.

5. Applicants seek an order ("Order") to permit one or more Regulated Funds[3] and/or one or more Affiliated Funds to participate in the same investment opportunities through a proposed co-investment program (the "Co-Investment Program") where such participation would otherwise be prohibited under section 57(a)(4) and rule 17d–1 by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser negotiates terms in addition to price;[4] and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers ("Follow-On Investments"). "Co-Investment Transaction" means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub, as defined below) participated together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. "Potential Co-Investment Transaction" means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[5]

6. The Existing SBIC Subsidiary is a Delaware limited partnership that is licensed by the Small Business Administration (the "SBA") to operate under the Small Business Investment Act of 1958 (the "SBA Act") as a small business investment company (an "SBIC"). The Existing SBIC Subsidiary is a Wholly-Owned Investment Sub of OFS BDC.[6] OFS BDC's investment strategy includes the Existing SBIC Subsidiary. Applicants state any of the Regulated Funds may, from time to time, form one or more Wholly-Owned Investment Subs.

7. Applicants state that a Wholly-Owned Investment Sub would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the requested order, as though the parent Regulated Fund were participating directly.[7] Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Regulated Fund's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

8. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment as described in the application ("Available Capital"), and other pertinent factors applicable to that Regulated Fund.[8] The Board of each Regulated Fund, including the directors that are not "interested persons" within the meaning of section 2(a)(19) of the Act (the "Non-Interested Directors"), has (or will have prior to relying on the requested Order) determined that it is in the best interests of the Regulated Fund to participate in Co-Investment Transactions.[9]

9. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act ("Eligible Directors"), and the "required majority," as defined in section 57(o) of the Act ("Required Majority")[10] will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

10. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has

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[2] "Affiliated Fund" means the Existing Affiliated Funds and any Future Affiliated Fund. "Future Affiliated Fund" means any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program. The term "Adviser" means (a) OFS Adviser and (b) any future investment adviser that controls, is controlled by, or is under common control with OFS Adviser and is registered as an investment adviser under the Advisers Act.

[3] "Regulated Fund" means any of the Existing Regulated Funds and any Future Regulated Fund. "Future Regulated Fund" means any closed-end management investment company (a) that is registered under the Act or has elected to be regulated as BDC, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the Co-Investment Program.

[4] The term "private placement transactions" means transactions in which the offer and sale of securities by the issuer are exempt from registration under the Securities Act of 1933 (the "Securities Act").

[5] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[6] The term "Wholly-Owned Investment Sub" means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Fund (and, in the case of an SBIC Subsidiary, maintain a license under the SBA Act and issue debentures guaranteed by the SBA); (iii) with respect to which the board of directors of the Regulated Fund (the "Board") has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. The term "SBIC Subsidiary" means the Existing SBIC Subsidiary and any Future SBIC Subsidiary. "Future SBIC Subsidiary" means any Wholly-Owned Investment Sub that is licensed by the SBA to operate under the SBA Act as an SBIC.

[7] All subsidiaries of the Regulated Funds participating in Co-Investment Transactions will be Wholly-Owned Investment Subs and will have Objectives and Strategies (as defined below) that are either the same as, or a subset of, the Regulated Fund's Objectives and Strategies.

[8] "Objectives and Strategies" means a Regulated Fund's investment objectives and strategies, as described in the Regulated Fund's registration statement on Form N–2 or Form 10, as applicable, other filings the Regulated Fund has made with the Commission under the Securities Act, or under the Securities Exchange Act of 1934, and the Regulated Fund's reports to shareholders.

[9] The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

[10] In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

11. No Non-Interested Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than through share ownership in one of the Regulated Funds.

12. If the Advisers, the principal owners of any of the Advisers (the "Principals"), or any person controlling, controlled by, or under common control with the Advisers or the Principals, and the Affiliated Funds (collectively, the "Holders") own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the "Shares"), then the Holders will vote such Shares as required under condition 14. Applicants believe that this condition will ensure that the Non-Interested Directors will act independently in evaluating the Co-Investment Program, because the ability of the Advisers or the Principals to influence the Non-Interested Directors by a suggestion, explicit or implied, that the Non-Interested Directors can be removed will be limited significantly. The Non-Interested Directors will evaluate and approve any such independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the Regulated Funds and Affiliated Funds could be deemed to be a person related to each Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for an Affiliated Fund or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for such Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the shareholders of the Regulated Fund; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of other Regulated Funds or Affiliated Funds; provided that, if any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of the Affiliated Fund or a Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, the Affiliated Funds or the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[11] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Fund, or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8. (a) If any Affiliated Fund or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

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[11] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

(ii) the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity; then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the maximum amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in this application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the agreement between the Adviser and the Regulated Fund or Affiliated Fund.

14. If the Holders own in the aggregate more than 25% of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the 1940 Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22426 Filed 9–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32261; File No. 812–14453]

AB Private Credit Investors Corporation, et al.; Notice of Application

September 13, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and under rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a business development company ("BDC") and certain closed end investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: AB Private Credit Investors Corporation ("AB BDC I"), AB Private Credit Investors Middle Market Direct Lending Fund, L.P. ("AB PCI Fund I"), AB Energy Opportunity Fund, L.P. ("AB Energy Fund," and together with AB PCI Fund I, the "Existing Affiliated Funds"), and AB Private Credit Investors LLC ("AB–PCI"), on behalf of itself and its successors.[1]

FILING DATES: The application was filed on April 30, 2015, and amended on October 5, 2015 and May 24, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 7, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

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[1] The term "successor," as applied to each AB–PCI Adviser (defined below), means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

ADDRESSES: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090. Applicants, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. AB BDC I, a Maryland corporation, is organized as a closed-end management investment company that will elect to be regulated as a BDC under section 54(a) of the Act prior to the effectiveness of the requested order.[2] AB BDC I's Objectives and Strategies [3] are to principally generate current income through direct investments in private loans and notes and, to a lesser extent, long-term capital appreciation through private equity investments. The board of directors of AB BDC I (the "AB BDC I Board") is comprised of three directors. The AB BDC I Board and any board of directors of a Future Regulated Fund (defined below) (the "Boards" and each a "Board") will be comprised of directors, a majority of whom will not be "interested persons," within the meaning of section 2(a)(19) of the Act (the "Non-Interested Directors"), of AB BDC I or any Future Regulated Fund.

2. AB PCI Fund I is a Delaware limited partnership that is exempt from registration pursuant to section 3(c)(7) of the Act. AB PCI Fund I's investment objective and strategies are to generate both current income and long-term capital appreciation through debt and equity investments.

3. AB Energy Fund is a Delaware limited partnership that is exempt from registration pursuant to section 3(c)(7) of the Act. AB Energy Fund's investment objective and strategies are to generate attractive risk-adjusted returns, through current income and capital gains, by capitalizing on private and public debt and equity investment opportunities in North American oil and gas producers.

4. AB–PCI, a Delaware limited liability company, is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). AB–PCI is a wholly-owned subsidiary of AllianceBernstein L.P., a New York based global asset management firm. AB–PCI will serve as investment adviser to AB BDC I and currently serves as investment adviser to the Existing Affiliated Funds.

5. Applicants seek an order ("Order") to permit one or more Regulated Funds [4] and/or one or more Affiliated Funds [5] to participate in the same investment opportunities through a proposed co-investment program (the "Co-Investment Program") where such participation would otherwise be prohibited under section 57(a)(4) and rule 17d–1 by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an AB–PCI Adviser negotiates terms in addition to price;[6] and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers ("Follow-On Investments"). "Co-Investment Transaction" means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub, defined below) participated together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. "Potential Co-Investment Transaction" means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[7]

6. Applicants state that any of the Regulated Funds may, from time to time, form one or more Wholly-Owned Investment Subs.[8] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Regulated Fund's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated

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[2] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[3] "Objectives and Strategies" means a Regulated Fund's (defined below) investment objectives and strategies, as described in the Regulated Fund's registration statement on Form N–2 or Form 10–12G, as applicable, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the "Securities Act"), or under the Securities Exchange Act of 1934, and the Regulated Fund's reports to shareholders.

[4] "Regulated Fund" means AB BDC I and any Future Regulated Fund. "Future Regulated Fund" means any closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an AB–PCI Adviser, and (c) that intends to participate in the Co-Investment Program. The term "AB–PCI Adviser" means (a) AB–PCI and (b) any future investment adviser that is controlled by AB–PCI and is registered as an investment adviser under the Advisers Act.

[5] "Affiliated Fund" means the Existing Affiliated Funds and any Future Affiliated Fund. "Future Affiliated Fund" means any entity (a) whose investment adviser is an AB–PCI Adviser, (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

[6] The term "private placement transactions" means transactions in which the offer and sale of securities by the issuer are exempt from registration under the Securities Act.

[7] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[8] The term "Wholly-Owned Investment Sub" means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Fund; (iii) with respect to which the Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

Fund and the Wholly-Owned Investment Sub.

7. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable AB–PCI Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment, and other pertinent factors applicable to that Regulated Fund. The Board of each Regulated Fund, including the Non-Interested Directors has (or will have prior to relying on the requested Order) determined that it is in the best interests of the Regulated Fund to participate in the Co-Investment Transaction.[9]

8. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the AB–PCI Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act ("Eligible Directors"), and the "required majority," as defined in section 57(o) of the Act ("Required Majority")[10] will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

9. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

10. No Non-Interested Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than through share ownership in one of the Regulated Funds.

11. Applicants also represent that if an AB–PCI Adviser or its principals, or any person controlling, controlled by, or under common control with an AB–PCI Adviser or its principals, and the Affiliated Funds (collectively, the "Holders") own in the aggregate more than 25% of the outstanding voting shares of a Regulated Fund (the "Shares"), then the Holders will vote such Shares as required under condition 14.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the Regulated Funds and Affiliated Funds could be deemed to be a person related to each Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time an AB–PCI Adviser considers a Potential Co-Investment Transaction for an Affiliated Fund or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's AB–PCI Adviser will make an independent determination of the appropriateness of the investment for such Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the AB–PCI Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable AB–PCI Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each. The applicable AB–PCI Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's available capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

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[9] The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

[10] In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

(c) After making the determinations required in conditions 1 and 2(a), the applicable AB–PCI Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the shareholders of the Regulated Fund; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the participating Regulated Fund would not be on a basis different from or less advantageous than that of other Regulated Funds or Affiliated Funds; provided that, if any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable AB–PCI Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of an Affiliated Fund or a Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the AB–PCI Advisers, the Affiliated Funds or the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable AB–PCI Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[11] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Fund, or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable AB–PCI Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the AB–PCI Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

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[11] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

8. (a) If any Affiliated Fund or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable AB–PCI Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the AB–PCI Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the AB–PCI Adviser to be invested by each Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the participating Affiliated Funds in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them pro rata based on each participant's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the AB–PCI Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee[12] (including break-up or commitment fees but excluding broker's fees contemplated section 17(e) or 57(k) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an AB–PCI Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such AB–PCI Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the AB–PCI Advisers, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an AB–PCI Adviser, investment advisory fees paid in accordance with the agreement between the AB–PCI Adviser and the Regulated Fund or Affiliated Fund.

14. If the Holders own in the aggregate more than 25% of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22427 Filed 9–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78820; File No. SR–IEX–2016–13]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 11.340 To Modify Certain Data Collection Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program

September 13, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 30, 2016, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[12] Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder,[5] Investors Exchange LLC (''IEX'' or ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend Rule 11.340 to modify certain data collection requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'').[6]

IEX has filed the proposed rule change for immediate effectiveness. IEX has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on August 30, 2016.

The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, FINRA, and several other self-regulatory organizations (the ''Participants'') filed with the Commission, pursuant to Section 11A of the Act[7] and Rule 608 of Regulation NMS thereunder,[8] the Plan to Implement a Tick Size Pilot Program (the ''Plan'').[9] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[10] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[11] An amendment to the Plan adding IEX as a Participant was filed with the Commission on August 4, 2016.[12]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying quoting and trading increments. Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group (''Test Group Two'') will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[14] Pilot Securities in the third test group (''Test Group Three'') will be subject to the same quoting and trading increments as Test Group Two, and also will be subject to the ''Trade-at'' requirement to prevent price matching by a market participant that is not displaying at the price of a Trading Center's ''Best Protected Bid'' or ''Best Protected Offer,'' unless an enumerated exception applies.[15] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[16] will apply to the Trade-at requirement.

The Plan also requires a Trading Center[17] or a Market Maker[18] to collect and transmit certain data to its designated examining authority (''DEA''), and requires DEAs to transmit this data to the Commission. Participants that operate a Trading Center also are required under the Plan to collect certain data, which is then transmitted directly to the Commission. With respect to Trading Centers, Appendix B.I to the Plan (Market Quality Statistics) requires a Trading Center to submit to the Participant that is its DEA a variety of market quality statistics. Appendix B.II to the Plan (Market and Marketable Limit Order Data) requires a Trading Center to submit information to its DEA relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, and the National Best Bid and National Best Offer quoted price.

With respect to Market Makers, Appendix B.III requires a Participant that is a national securities exchange to collect daily Market Maker Registration statistics. Appendix B.IV requires a Participant to collect data related to Market Maker participation with respect to each Market Maker engaging in trading activity on a Trading Center operated by the Participant. Appendix C.I requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Appendix C.II requires the Participant, as DEA, to aggregate the Appendix C.I data, and to transmit this data to the Commission.

The Commission approved the Pilot on a two-year basis, with implementation to begin no later than

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[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 242.608.

[9] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[10] *See* Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[11] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[12] Pursuant to the terms of the Plan, the amendment was effective upon filing pursuant to Rule 608(b)(3)(iii) of the Exchange Act because it involves solely technical or ministerial matters.

[13] *See* Section VI(B) of the Plan.

[14] *See* Section VI(C) of the Plan.

[15] *See* Section VI(D) of the Plan.

[16] 17 CFR 242.611.

[17] The Plan incorporates the definition of a ''Trading Center'' from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a ''Trading Center'' as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' *See* 17 CFR 242.600(b).

[18] The Plan defines a Market Maker as ''a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.''

May 6, 2016.[19] On November 6, 2015, the SEC exempted the Participants from implementing the pilot until October 3, 2016.[20] As set forth in Appendices B and C to the Plan, data that is reported pursuant to the appendices shall be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016.

On July 28, 2016, IEX filed with the Commission a proposed rule change to adopt IEX Rule 11.340(b) to implement the data collection requirements of the Plan and also requested that the Commission grant it certain specified exemptions that were previously provided to other Plan Participants prior to the time that IEX became a Plan Participant.[21]

IEX now proposes to further amend Rule 11.340(b) to modify additional data collection and reporting requirements.[22] First, Appendix B.I.a(21) through B.I.a(27) currently requires that Trading Centers report the cumulative number of shares of cancelled orders during a specified duration of time after receipt of the order that was cancelled. IEX and the other Participants believe that, for purposes of reporting cancelled orders, it is appropriate to categorize unexecuted Immediate or Cancel orders separately as one bucket irrespective of the duration of time after order receipt, *i.e.,* without a time increment, to better differentiate orders cancelled subsequent to entry from those where the customer's intent prior to order entry was to cancel the order if no execution could be immediately obtained. IEX, therefore, proposes to modify Supplementary Material .04 to provide that unexecuted Immediate or Cancel orders shall be categorized separately for purposes of Appendix B.I.a(21) through B.I.a(27).

The second change relates to the reporting of daily market quality statistics pursuant to Appendix B.I. Currently, Appendix B.I sets forth categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. IEX and the other Participants have determined that it is appropriate to include an order type for limit orders priced more than $0.10 away from the NBBO for purposes of Appendix B reporting. IEX therefore proposes to amend Supplementary Material .06 to provide that limit orders priced more than $0.10 away from the NBBO shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (22). These orders are not currently required to be reported pursuant to Appendix B, and IEX and the other Participants believe that requiring the reporting of such orders will produce a more comprehensive data set.

The third change relates to the reporting of market quality statistics pursuant to Appendix B.I for a variety of order types, including inside-the-quote resting limit orders (12), at-the-quote resting limit orders (13), and near-the-quote resting limit orders (within $0.10 of the NBBO) (14). IEX and the other Participants believe that it is appropriate to require Trading Centers to report all orders that fall within these categories, and not just those orders that are "resting." IEX therefore, proposes to amend Supplementary Material .06 to make this change.

In the fourth change, IEX proposes to add new Supplementary Material .08 to modify the manner in which market maker participation statistics are calculated. Currently, Appendix B.IV provides that market maker participation statistics shall be calculated based on share participation, trade participation, cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation, and outside-the-quote share (trade) participation. IEX and the other Participants have determined that it is appropriate to add the count of the number of Market Makers used in the calculation of share (trade) participation to each category. FINRA [sic] is therefore proposing this change as part of Supplementary Material .10. In addition, Appendix B.IV(b) and (c) currently require that, when aggregating across Market Makers, share participation and trade participation shall be calculated using the share-weighted average and trade-weighted average, respectively. IEX and the other Participants believe that it is more appropriate to calculate share and trade participation by providing the total count of shares or trades, as applicable, rather than weighted averages, and IEX is therefore proposing this change as part of Supplementary Material .10.

The fifth change relates to the NBBO that a Trading Center is required to use when performing certain quote-related calculations. When calculating cross-quote share (trade) participation pursuant to Appendix B.IV(d) and inside-the-quote share (trade) participation pursuant to Appendix B.IV(e), the Plan requires the Trading Center to utilize the NBBO at the time of the trade for both share and trade participation calculations. When calculating at-the-quote share (trade) participation and outside-the-quote share (trade) participation pursuant to Appendix B.IV(f) and (g), the Plan allows the Trading Center to utilize the National Best Bid of National Best Offer (NBBO) at the time of or immediately before the trade for both share and trade participation calculations. IEX and the other Participants believe that it is appropriate to calculate all quote participation (cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation and outside-the-quote share (trade) participation) solely by reference to the NBBO in effect immediately prior to the trade. IEX therefore proposes to make this change as part of Supplementary Material .08.

Finally, IEX proposes to change the end date until which the Pre-Pilot Data Collection Securities shall be used to fulfill the Plan's data collection requirements. Currently, Supplementary Material .10 provides that Pre-Pilot Data Collection Securities are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. IEX and the other Participants believe that it is appropriate to use the Pilot Securities to satisfy the Plan's data collection requirements prior to the commencement of the Pilot. According, IEX is revising Supplementary Material .10 (which will be re-numbered as Supplementary Material .11) to provide that the Pre-Pilot Data Collection Securities shall be used to satisfy the Plan's data collection requirements through thirty-one days prior to the Pilot Period, after which time the Pilot Securities shall be used for purposes of the data collection requirements.[23]

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[19] *See* Approval Order at 27533 and 27545.

[20] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4–657).

[21] *See* Securities Exchange Act Release No. 78481 (August 4, 2016), 81 FR 52933 (August 10, 2016) (Notice of Filing of File No. SR–IEX–2016–07).

IEX will also shortly submit a proposed rule change to implement the quoting and trading requirements of the Plan.

[22] IEX notes that, in connection with this proposed rule change, the Participants have submitted a request seeking exemptive relief from certain of the Plan's data collection requirements.

[23] After regular trading hours on September 2, 2016, the national securities exchanges will establish which securities will be included as Pilot Securities for purposes of the Plan. FINRA and the

As noted in Item 2 of this filing, IEX has filed the proposed rule change for immediate effectiveness. IEX has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on August 30, 2016.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[24] in general and furthers the objectives of Sections 6(b)(5) of the Act[25] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

IEX believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist IEX in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. IEX believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX notes that the proposed rule change implements the provisions of the Plan, and is designed to assist IEX in meeting its regulatory obligations pursuant to the Plan. IEX also notes that, other than the change to require use of the Pilot Securities beginning thirty days prior to the beginning of the Pilot Period, the proposed changes will not affect the data collection and reporting requirements for members that operate Trading Centers; the proposed changes will only affect how IEX and other Participants that operate Trading Centers collect and report data. IEX notes that, with respect to the change to require the use of the Pilot Securities beginning thirty days prior to the start of the Pilot Period, the proposed change reduces the number of securities on which affected members otherwise would have been required to collect data pursuant to the Plan and IEX Rule 11.340(b). In addition, the proposed rule change applies equally to all similarly situated members. Therefore, IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[26] and Rule 19b–4(f)(6)[27] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6)[28] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[29] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. IEX has asked the Commission to waive the 30-day operative delay so that so that the proposed rule change can become operative on August 30, 2016.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow IEX to implement the proposed rules immediately thereby preventing delays in the implementation of the Plan. The Commission notes that the Plan is scheduled to start on October 3, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[30]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[31]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–IEX–2016–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2016–03. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

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other Participants have determined that members should use the Pilot Securities list for data collection purposes once it becomes available. Thus, the proposed rule change requires that, beginning thirty days prior to the first day of the Pilot Period—*i.e.*, September 3, 2016—IEX and IEX members will comply with the data collection obligations of the Plan by collecting data on the Pilot Securities. As a result, beginning on September 3, 2016, members must migrate from using IEX's published Pre-Pilot Data Collection Security list and begin using the Pilot Securities list. September 2, 2016 will be the last day that members use the Pre-Pilot Data Collection Security list.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78s(b)(3)(C).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet Web site at *www.iextrading.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2016–13 and should be submitted on or before October 11, 2016.[32]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22417 Filed 9–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78829; File No. SR–NYSEMKT–2016–86]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Deadline for Implementing Rule 967.1NY(a)(2) and (3) Until September 30, 2016

September 13, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 6, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the deadline for implementing Rule 967.1NY(a)(2) and (3) until September 30, 2016 The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the deadline for implementing Rule 967.1NY(a)(2) and (3) until September 30, 2016. The Exchange has not met the current implementation deadline of July 31, 2016.

In March 2015, the Commission approved Rule 967.1NY, which provides a price protection risk mechanism for Market Maker quotes.[4] Rule 967.1NY provides two layers of price protection to incoming Market Maker quotes, rejecting those Market Maker quotes that exceed certain parameters, as a risk mitigation tool.[5] The Exchange has implemented the first layer of price protection (the NBBO Reasonability Check) and had until one year from the date of the Approval Order to implement the second layer of protection (the Underlying Stock Price/Strike Price Check) pursuant to Commentary .01 to Rule 967.1NY, which was March 4, 2016.[6]

In March 2016, because the Exchange had not yet implemented the Underlying Stock Price/Strike Price Check, the Exchange extended the deadline to implement Rule 967.1NY(a)(2) and (3) until July 31, 2016 (the "July 31st Deadline").[7] Subsequent to this extension, the Exchange modified Commentary .01 to Rule 967.1NY to exclude from the Underlying Stock Price/Strike Price Check certain securities for which there was no reliable (or in some cases any) last sale data.[8] Although the Exchange had finalized the technology related to the Underlying Stock Price/Strike Price Check, because this technology was packaged in a larger technology release that is currently being rolled out, the Exchange was not able to implement the technology by the July 31st Deadline. The Exchange is in the process of implementing the technology release that includes the Underlying Stock Price/Strike Price Check and plans to complete this implementation no later than the end of September 2016. The Exchange believes the proposed extension of the July 31st Deadline until September 30, 2016 would provide the Exchange with sufficient time to implement the functionality related to the rule. Moreover, the proposed change would update the rule to reflect the extended deadline, thus making clear to investors and the public that the Underlying Stock Price/Strike Price Check is not yet implemented.[9]

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[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 74440 (March 4, 2015), 80 FR 12687 (March 10, 2015) (SR–NYSEMKT–2014–116) (Approval Order); *see also* Securities Exchange Act Release No. 74017 (January 8, 2015), 80 FR 1979 (January 14, 2015) (SR–NYSEMKT–2014–116) (Notice).

[5] The first layer of price protection assesses incoming sell quotes against the NBB and incoming buy quotes against the NBO (the "NBBO Price Reasonability Check"). Specifically, Rule 967.1NY(a)(1) provided that when an NBBO is available, a Market Maker quote would be rejected if it is priced a specified dollar amount or percentage through the contra-side NBBO. The second layer of price protection assesses the price of call or put bids against a specified benchmark (the "Underlying Stock Price/Strike Price Check"), per Rule 967.1NY(a)(2) and (3). This second layer of protection applies to bids in call options or put options when (1) there is no NBBO available, for example, during pre-opening or prior to conducting a re-opening after a trading halt, or (2) if the NBBO is so wide as to not reflect an appropriate price for the respective options series.

[6] *See* Securities Exchange Act Release No. 75151 (June 11, 2015), 80 FR 34770 (June 17, 2015) (SR–NYSEMKT–2015–42).

[7] *See* Securities Exchange Act Release No. 77356 (March 14, 2016), 81 FR 14917 (March 18, 2016) (SR–NYSEMKT–2016–36).

[8] *See* Securities Exchange Act Release No. 77749 (April 29, 2016), 81 FR 27184 (May 5, 2016) (SR–NYSEMKT–2016–47).

[9] The Exchange has issued Trader Updates informing its market participants that the functionality related to the Underlying Stock Price/Strike Price Check is not yet available but is currently being implemented (together with the other technology updates with which it was packaged). *See, e.g.,* Trader Updates regarding Enhancements to Risk Control Functionality in Enhanced Certification Environment, dated 6/6/16, *available here, https://www.nyse.com/publicdocs/nyse/notifications/trader-update/NYSE%20Amex%20and%20Arca%20-%20Enhanced%20Risk%20Controls%20in%20Enhanced%20Cert.pdf* and regarding Risk Controls/Series Lookup Table Enhancements, dated 8/25/16, *available here, https://www.nyse.com/publicdocs/nyse/notifications/trader-update/NYSE%20Amex%20-%20Risk%20Controls%20Release%20details.pdf.*

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Specifically, the Exchange believes the proposal promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system because an extension of the July 31st Deadline would enable the Exchange to complete its implementation of the technology related to the Underlying Stock Price/Strike Price Check, which is currently being implemented as part of a larger technology release. Moreover, the proposed extension would update the rule to reflect the extended deadline for implementation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather, to extend the July 31st Deadline for implementing the functionality related to the Underlying Stock Price/Strike Price Check, which is currently being implemented as part of a larger technology release.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to immediately extend the implementation deadline for the Underlying Stock Price/Strike Price Check without delay and provide the Exchange additional time to implement the technology associated with such price protection. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–86. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–86, and should be submitted on or before October 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22422 Filed 9–16–16; 8:45 am]

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[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78823; File No. SR–FINRA–2016–018]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change Amending FINRA Rules 2210 (Communications With the Public), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), and 2214 (Requirements for the Use of Investment Analysis Tools), as Modified by Partial Amendment No. 1

September 13, 2016.

I. Introduction

On May 25, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] proposed amendments that would revise the filing requirements in FINRA Rule 2210 (Communications with the Public) and FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools) and the content and disclosure requirements in FINRA Rule 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings).

The proposed rule change was published for comment in the **Federal Register** on June 15, 2016.[3] The public comment period closed on July 6, 2016. On July 19, 2016, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to September 13, 2016. The Commission received five comment letters in response to the Notice.[4] On September 1, 2016, FINRA responded to the comment letters received in response to the Notice and filed a partial amendment to the proposed rule change (''Partial Amendment No. 1'').[5]

This order provides notice of filing of Partial Amendment No. 1 and approves the proposal, as modified by Partial Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

Background

In April 2014, FINRA launched a retrospective review of its communications with the public rules to assess their effectiveness and efficiency. In December 2014, FINRA published a report on the assessment phase of the review.[6] The report concluded that, while the rules have met their intended investor protection objectives, they could benefit from some updating to better align the investor protection benefits and the economic impacts. To this end, FINRA recommended consideration of a combination of rule proposals, guidance and administrative measures, to enhance the efficiency of the rules with no reduction in investor protection.

Pursuant to these recommendations, FINRA initially is proposing amendments to the filing requirements in FINRA Rule 2210 and FINRA Rule 2214 and the content and disclosure requirements in FINRA Rule 2213.

Original Proposal

New Member Communications

FINRA Rule 2210(c)(1)(A) currently requires new FINRA members to file with FINRA retail communications used in any electronic or other public media at least 10 business days prior to use. This requirement extends for one year from the effective date of the firm's membership. This new firm filing requirement only applies to broadly disseminated retail communications, such as generally accessible Web sites, print media communications, and television and radio commercials.

In its initial proposal, FINRA stated its belief that that the requirement for new members to file their broadly disseminated retail communications serves a useful purpose, since new members may not be as familiar with the standards that apply to retail communications as more established members, but that the requirement to file these communications at least 10 business days prior to use can delay members' abilities to communicate with the public in a timely manner. For example, if a new member wishes to update its public Web site with new information, the member must first file the proposed update with FINRA and wait at least 10 business days before it can post this update on its Web site. FINRA stated that such a delay may hinder its ability to communicate important information to its existing and prospective customers.

FINRA stated that it believed it could continue to protect investors from potential harm without imposing this time delay on new members by reviewing new members' communications on a post-use, rather than a pre-use, basis. FINRA had found a post-use filing requirement to be an effective investor protection approach for retail communications with similar risk profiles as FINRA typically sees from new members. Accordingly, FINRA initially proposed to revise the new member filing requirement to require new members to file retail communications used in electronic or other public media within 10 business days of first use for a one-year period, rather than requiring these filings at least 10 business days prior to use.[7] As explained in more detail below, upon consideration of comments received on the proposal, FINRA has determined not to amend these requirements at this time, and filed a Partial Amendment No. 1 with the Commission to that effect.[8]

Investment Company Shareholder Reports

FINRA currently requires members to file the management's discussion of fund performance (''MDFP'') portion of a registered investment company shareholder report if the report is distributed or made available to prospective investors.[9] FINRA has required the MDFP to be filed because members sometimes distribute or make shareholder reports available to prospective investors to provide more information about the funds they offer. Thus, FINRA has considered the MDFP to be subject to the filing requirement for investment company retail communications.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 78026 (June 9, 2016), 81 FR 39081 (June 15, 2016) (''Notice'').

[4] *See* Letters from Hugh Berkson, Public Investors Arbitration Bar Association, dated July 5, 2016 (''PIABA Letter''); Alexander C. Gavis, Fidelity Investments, dated July 6, 2016 (''Fidelity Letter''); Dorothy Donohue, Investment Company Institute, dated July 6, 2016 (''ICI Letter''); Timothy W. Cameron and Lindsey Weber Keljo, Securities Industry and Financial Markets Association, dated July 6, 2016 (''SIFMA Letter''); and Erica A. Green, FOLIOfn Investments, Inc., dated July 7, 2016 (''FOLIO Letter''). Comment letters are available at *www.sec.gov.*

[5] *See* Letter from Joseph P. Savage, Vice President and Counsel, Office of Regulatory Policy, FINRA, to the Commission, dated September 1, 2016 (''FINRA Letter''). The FINRA Letter and the text of Partial Amendment No. 1 are available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room; the text of the FINRA letter is also available at the Commission's Web site at *https://www.sec.gov/comments/sr-finra-2016-018/finra2016018-6.pdf.*

[6] *See* Retrospective Rule Report, Communications with the Public, December 2014.

[7] *See* proposed amendments to FINRA Rule 2210(c)(1)(A). This proposed change also would delete as redundant current rule text that permits a new member to file a retail communication that is a free writing prospectus filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), within 10 business days of first use rather than at least 10 business days prior to first use.

[8] *See* FINRA Letter at 3; see also Partial Amendment No. 1.

[9] *See, e.g., Notice to Members* 99–79 (September 1999) (''[m]embers are not required to file shareholder reports with [FINRA] if they are only sent to current fund shareholders. However, if a member uses a shareholder report as sales material with prospective investors, the member must file the management's discussion of fund performance

Although Rule 2210 does not contain any express filing exclusion for investment company shareholder reports, FINRA has not required members to file portions of shareholder reports other than the MDFP, such as the financial statements or schedules of portfolio investments. FINRA has not regarded these other parts of investment company shareholder reports to be subject to the filing requirements of Rule 2210, since they serve a regulatory purpose rather than promoting the sale of investment company securities.

Investment companies already must file shareholder reports with the SEC,[10] and the MDFP typically presents less investor risk than other types of promotional communications concerning investment companies, since it usually focuses on the most recent period covered by the report rather than containing promotional content that is intended to encourage future investments. Accordingly, FINRA proposes to exclude from the FINRA filing requirements the MDFP by adding an express exclusion for annual or semi-annual reports that have been filed with the SEC in compliance with applicable requirements.[11] FINRA believes that it would assist members' understanding of Rule 2210 expressly to clarify that annual and semi-annual reports that have been filed with the SEC are not subject to filing with FINRA. The rule already excludes prospectuses, fund profiles, offering circulars and similar documents that have been filed with the SEC. As such, FINRA believes it would be consistent to add shareholder reports that have been filed with the SEC to that list.

Offering Documents Concerning Unregistered Securities

Rule 2210(c)(7)(F) currently excludes from filing "prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the SEC or any state, *or that is exempt from such registration* . . ." (emphasis supplied). The filing exclusion is intended (and has been interpreted by FINRA) to exclude issuer-prepared offering documents concerning securities offerings that are exempt from registration.

Accordingly, FINRA is proposing to amend Rule 2210(c)(7)(F) to make this intent more clear, and to avoid any confusion concerning the phrase "or that is exempt from such registration." As revised, Rule 2210(c)(7)(F) would exclude from filing, among other things, "similar offering documents concerning securities offerings that are exempt from SEC or state registration requirements." While FINRA believes that this amendment will clarify this filing exclusion, it does not believe that it represents a substantive change to the current filing exclusion for unregistered securities' offering documents.

Backup Material for Investment Company Performance Rankings and Comparisons

A member that files a retail communication for a registered investment company that contains a fund performance ranking or performance comparison must include a copy of the ranking or comparison used in the retail communication.[12] When FINRA adopted this requirement, prior to the Internet, FINRA staff did not have ready access to the sources of rankings or comparisons. Today, this information typically is easily available online. FINRA therefore proposes to eliminate the requirement to file ranking and comparison backup material and instead expressly to require members to maintain back-up materials as part of their records.[13]

Generic Investment Company Communications

FINRA Rule 2210(c)(3)(A) requires members to file within 10 business days of first use retail communications "concerning" registered investment companies. FINRA proposes to revise this filing requirement to cover only retail communications that promote a specific registered investment company or family of registered investment companies. Thus, members would no longer be required to file generic investment company retail communications.

An example of such a generic communication would be a retail communication that describes different mutual fund types and features but does not discuss the benefits of a specific fund or fund family. This type of material typically is intended to educate the public about investment companies in general or the types of products that a member offers, and thus does not present the same risks of including potentially misleading information as promotional communications about specific funds or fund families.

Investment Analysis Tools

"Investment analysis tools" are interactive technological tools that produce simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken. Pursuant to FINRA Rules 2210(c)(3)(C) and 2214(a), members that intend to offer an investment analysis tool must file templates for written reports produced by, or retail communications concerning, the tool, within 10 business days of first use. Rule 2214 also requires members to provide FINRA with access to the tool itself, and provide customers with specific disclosures when members communicate about the tool, use the tool or provide written reports generated by the tool.

Since Rule 2214 became effective in 2005,[14] FINRA has found that members have largely complied with the Rule's requirements applicable to templates for written reports produced by investment analysis tools and retail communications concerning such tools. FINRA does not believe that the filing requirements for these templates and retail communications are necessary given this history and in light of the investor protection afforded by other content standards and the requirement that members provide access to the tools and their output upon request of FINRA staff. Accordingly, FINRA proposes to eliminate the filing requirements for investment analysis tool report templates and retail communications concerning such tools and instead require members to provide FINRA staff with access to investment analysis tools upon request.[15]

Filing Exclusion for Templates

Members are not required to file retail communications that are based on templates that were previously filed

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(MDFP) portion of the report (as well as any supplemental sales material attached to or distributed with the report) with the Department.").

[10] *See* Section 30 of the Investment Company Act of 1940 and Rules 30a–1 and 30b1–1 thereunder.

[11] *See* proposed amendments to FINRA Rule 2210(c)(7)(F). To the extent that a member distributes or attaches registered investment company sales material along with the fund's shareholder report, such material would remain subject to filing under Rule 2210.

[12] *See* FINRA Rule 2210(c)(3)(A).

[13] *See* proposed amendments to FINRA Rules 2210(b)(4)(A)(vi) and 2210(c)(3)(A).

[14] *See Notice to Members* 04–86 (November 2004).

[15] *See* proposed amendments to FINRA Rules 2210(c)(3) and 2214(a).

with FINRA but changed only to update recent statistical or other non-narrative information.[16] However, members are required to re-file previously filed retail communications that are subject to filing under FINRA Rule 2210(c) to the extent that the member has updated any narrative information contained in the prior filing. Often these re-filed retail communications are templates for fact sheets concerning particular funds or products and provide quarterly information concerning a product's performance, portfolio holdings and investment objectives.

Through its review of updated fund fact sheets and other similar templates, FINRA has found that certain narrative information has not presented significant risk to investors, and that these narrative updates typically are consistent with applicable standards. In particular, narrative updates that are not predictive in nature and merely describe market events that occurred during the period covered by the communication, or that merely describe changes in a fund's portfolio, rarely have presented significant investor risks. In addition, members often will update narrative information concerning a registered investment company, such as a description of a fund's investment objectives, based on information that is sourced from the fund's regulatory documents filed with the SEC. In both cases, FINRA believes that the costs associated with filing these types of narrative updates exceed the investor benefits associated with FINRA staff review of these updates.

Accordingly, FINRA proposes to expand the template filing exclusion also to allow members to include updated non-predictive narrative descriptions of market events during the period covered by the communication and factual descriptions of portfolio changes without having to refile the template, as well as updated information that is sourced from a registered investment company's regulatory documents filed with the SEC.[17]

Bond Mutual Fund Volatility Ratings

FINRA Rule 2213 permits members to use communications that include ratings provided by independent third parties that address the sensitivity of the net asset value of an open-end management investment company's bond portfolio to changes in market conditions and the general economy, subject to a number of requirements. For example, these communications must be accompanied or preceded by the bond fund's prospectus and contain specific disclosures. Members currently must file retail communications that include bond mutual fund volatility ratings at least 10 business days prior to first use, and withhold them from publication or circulation until any changes specified by FINRA have been made.[18]

FINRA believes that some of these requirements have discouraged members from including bond fund volatility ratings in their communications due to the significant compliance burdens associated with doing so, and the level of disclosures required to accompany such ratings. FINRA has found that, since Rule 2213 first became effective in 2000,[19] members have rarely, if ever, filed communications that contain bond fund volatility ratings. In general, in the few cases in which members filed such communications with FINRA, the staff has found that they have met applicable standards.

Given that bond fund volatility ratings may provide useful information to investors, and that Rule 2213 as currently drafted appears to have discouraged members from including these ratings in their communications, FINRA believes it is appropriate to revise the rule to reduce some of these burdens while continuing to include requirements that it believes will protect investors. Accordingly, FINRA proposes to modify some of Rule 2213's requirements.

Consistent with the filing requirements for other retail communications about specific registered investment companies, the proposal would no longer require a retail communication that includes a bond fund volatility rating to be accompanied or preceded by a prospectus for the fund, and would permit members to file these communications within 10 business days of first use rather than prior to use.[20]

FINRA believes that the requirement that any retail communication including a bond fund volatility rating be accompanied or preceded by a fund prospectus increases the burdens associated with these communications without adding commensurate investor protection. Except in rare circumstances due to operational hardship, all mutual fund prospectuses are available online, and thus an investor can easily access the prospectus, if needed.

Similarly, FINRA believes that requiring members to file these retail communications at least 10 business days prior to use and to withhold them from publication or circulation until any changes specified by the Department have been made does not provide appreciably greater investor protection. According to FINRA, this pre-use filing requirement inhibits a member's ability to circulate retail communications containing volatility ratings in a timely manner. Moreover, members still would be required to file these communications within 10 business days of first use, so that if they contain misleading content, the Department staff can take appropriate measures to correct any problems, such as recommending changes to the communication, or directing the member to cease using the communication with the public. FINRA has found a post-use filing requirement to be an effective investor protection approach for most retail communications with similar risk profiles.[21]

The proposal also would streamline the content and disclosure requirements. In particular, the amendments would eliminate the requirements: (1) That all disclosures be contained in a separate Disclosure Statement; (2) to disclose all current bond mutual fund volatility ratings that have been issued with respect to the fund; (3) to explain the reason for any change in the current rating from the most recent prior rating; (4) to describe the criteria and methodologies used to determine the rating; (5) to include a statement that not all bond funds have volatility ratings; and (6) to include a statement that the portfolio may have changed since the date of the rating.

FINRA believes that many of these requirements are unnecessary in light of the content requirements that still will apply to such retail communications. For example, members still would not be permitted to refer to a volatility rating as a "risk" rating, and would have to incorporate the most recently available rating and reflect information that, at a minimum, is current to the most recent calendar quarter end. The criteria and methodology used to determine the rating still would have to be based exclusively on objective, quantifiable factors, and such communications would have to include a link to, or Web site address for, a Web site that includes the criteria and methodology. Communications would have to provide the name of the entity that issued the rating, the most current rating and date for the rating, and whether consideration was paid for the rating, as well as a description of the types of risks the rating measures.

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[16] *See* FINRA Rule 2210(c)(7)(B).

[17] *See* proposed amendments to FINRA Rule 2210(c)(7)(B).

[18] FINRA Rules 2210(c)(2)(C) and 2213(b) and (c).

[19] *See Notice to Members* 00–23 (April 2000).

[20] *See* proposed amendments to FINRA Rules 2210(c) and 2213(b). This change relates only to Rule 2213 and does not affect a member's obligation to deliver a prospectus under the Securities Act or for Investment Company Act companies.

[21] As a general matter, FINRA does not believe that retail communications that include bond fund volatility ratings present risks of investor harm that are comparable to other retail communications that require pre-use filing, such as retail communications that include self-created rankings or comparisons or retail communications concerning security futures. *See* FINRA Rule 2210(c)(2)(A) and (B). Retail communications that include self-created rankings or comparisons present a greater risk of being misleading than bond fund volatility ratings, since they are not created by an entity that is independent of the member. In addition, security futures are more complex and potentially more volatile than most bond mutual funds.

FINRA believes that, as long as the required disclosures are provided, it is not necessary that they appear in a separate Disclosure Statement. FINRA also believes it is unnecessary to disclose all other current volatility ratings assigned to the advertised fund, since this requirement is not imposed under other similar rules. For example, FINRA Rule 2214 allows members to provide fund ranking information without also requiring the member to disclose all rankings assigned by other ranking entities. The other disclosure requirements add little understanding about the rating presented, while adding voluminous text to the retail communication. In addition, if an investor does seek more information about the criteria and methodology used to create the rating, this information will be available via a hyperlink to a separate Web site.

Proposed Partial Amendment No. 1

In response to comments[22] (discussed below), FINRA has determined not to amend its current new member filing requirements, as set forth in FINRA Rule 2210(c)(1)(A), at this time. It has therefore deleted the proposed changes to FINRA Rule 2210(c)(1)(A). Although FINRA believes that it is a close balance between the investor protection benefits provided by pre-use review and the burden of complying with the existing rule, FINRA believes that it is more prudent to defer making the change to post-use filing of new member retail communications at this time. FINRA will continue to accumulate more data on the frequency and types of revisions required for new member retail communications before determining whether to consider any changes to this requirement in the future.[23]

III. Comment Summary and FINRA's Response

As noted above, the Commission received five comment letters on the proposed rule change[24] and a response letter from FINRA.[25] As discussed in more detail below, four of the commenters generally supported the proposal, but had some suggestions for changes.[26] One commenter opposed the proposal.[27]

Continuation of Retrospective Review

While two commenters generally supported the proposal, both encouraged FINRA to continue its retrospective review of its rules governing communications with the public to address other areas.[28] One commenter recommended that FINRA update its rules governing social media, mobile devices, and electronic communications, to address the amount of disclosure FINRA requires in print advertising, and to eliminate to the extent possible differences among the rules governing broker-dealer and investment adviser communications, particularly with respect to communications containing projections or performance information.[29] Another commenter recommended that FINRA codify a set of clear disclosure standards for closed-end fund marketing materials and to eliminate the filing requirement for these communications.[30]

In its response, FINRA stated that it continues to consider additional action on its retrospective review of the communications rules, including those raised by commenters on this proposal.[31]

New Member Filing Requirements

FINRA Rule 2210(c)(1)(A) currently requires new FINRA members to file with FINRA retail communications used in any electronic or other public media at least 10 business days prior to use. This requirement extends for one year from the effective date of the firm's membership. This new firm filing requirement only applies to broadly disseminated retail communications, such as generally accessible Web sites, print media communications, and television and radio commercials. The initial proposal would have modified this requirement to permit new members to file these retail communications within 10 business days of first use for a one-year period, rather than requiring these filings at least 10 business days prior to use.[32]

One commenter strongly opposed the proposed change to the new member filing requirement.[33] The commenter stated that the proposed change would eliminate the proactive investor protection that the current rule affords customers, and that post-use review of all new member retail communications by FINRA will not provide adequate investor protection for customers.[34] The commenter also argued that the pre-use filing requirement provides a deterrent effect to potential bad actors, and that a post-use filing requirement would embolden new members to prepare riskier retail communications.[35]

Another commenter supported the proposed change to the new member filing requirement from a pre-use to a post-use requirement, but argued that FINRA should go further and eliminate the filing requirement entirely in some circumstances.[36] This commenter asserted that other rules and requirements currently in place are sufficient to offer the important investor protections contemplated by the new member filing requirement, citing as an example FINRA's new member application process pursuant to NASD Rule 1013.[37] The commenter suggested that FINRA impose the filing requirement only on new members that do not have compliance or supervisory personnel with at least five years of experience directly related to sales practice requirements that would be responsible for reviewing and approving the firm's retail communications.[38] Alternatively, the commenter suggested narrowing the new member filing requirement to exclude generic retail communications and retail communications that contain non-predictive narrative descriptions.[39]

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[22] *See* PIABA Letter at 2.

[23] *See* FINRA Letter at 3.

[24] *See supra* note 4.

[25] *See supra* note 5.

[26] *See* Fidelity Letter, FOLIO Letter, ICI Letter, and SIFMA Letter.

[27] *See* PIABA Letter.

[28] *See* Fidelity Letter and ICI Letter.

[29] *See* Fidelity Letter.

[30] *See* ICI Letter.

[31] *See* FINRA Letter at 2.

[32] The proposed change also would delete as redundant current rule text that permits a new member to file a retail communication that is a free writing prospectus filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii) within 10 business days of first use rather than at least 10 business days prior to first use.

[33] *See* PIABA Letter at 1–3.

[34] *See id.* at 2–3.

[35] *See* PIABA Letter at 2–3. As FINRA stated in its response, "PIABA also criticized the proposed changes to the new member filing requirement based on the apparently mistaken belief that the proposal would differentiate its application between new member Web sites, and other widely disseminated retail communications." *See* FINRA Letter at 3 n.5. FINRA therefore clarified that "although an earlier version of the proposal contained such a distinction, the version FINRA filed with the Commission for comment did not." *Id.*

[36] *See* FOLIO Letter at 1–2.

[37] *See id.*

[38] *See id.*

In response to the suggestion by one commenter that FINRA eliminate the new member filing requirement in certain circumstances and narrow it in others, FINRA noted that the current rule already contains a mechanism to provide regulatory relief in the kinds of circumstances the commenter cited.[40] FINRA stated in its response that it is authorized conditionally or unconditionally to grant an exemption from the new member filing requirement for good cause shown.[41] Thus, if a member makes a persuasive case that the new member filing requirement should not apply to the firm, such as where the new firm is the successor to an existing firm and its compliance personnel have demonstrated familiarity with the communications rules, FINRA may consider granting an exemption from the filing requirement.[42] In addition, FINRA noted that even new members are not required to file retail communications where those communications do not make a financial or investment recommendation or otherwise promote a product or service of the member.[43] Thus, FINRA's view is that truly generic, non-promotional retail communications need not be filed under this requirement.[44]

After considering all of the comments, FINRA stated that it has determined not to amend its current new member filing requirements at this time.[45] Although FINRA believes that it is a close balance between the investor protection benefits provided by pre-use review and the burden of complying with the existing rule, FINRA believes that it is more prudent to defer making the change to post-use filing of new member retail communications at this time.[46] FINRA stated that it will continue to accumulate more data on the frequency and types of revisions required for new member retail communications before determining whether to consider any changes to this requirement in the future.[47]

Investment Company Shareholder Reports

FINRA currently requires members to file the management's discussion of fund performance ("MDFP") portion of a registered investment company shareholder report if the report is distributed or made available to prospective investors. FINRA proposes to exclude from the FINRA filing requirements the MDFP by adding an express exclusion for annual or semi-annual reports that have been filed with the SEC in compliance with applicable requirements.

Two commenters supported this proposed change.[48] One commenter noted that this exclusion would make FINRA's rule less burdensome on asset management firms by eliminating redundant filing requirements.[49] Another commenter opposed this change on the ground that Commission staff does not fully review all regulatory filings made on the EDGAR system, which is where filings of fund shareholder reports are made.[50]

In its response, FINRA stated that it maintains that the MDFP portion of shareholder reports should be excluded from the filing requirements.[51] FINRA stated that it has found through its filing program that the MDFPs in shareholder reports rarely have raised issues requiring members to revise or withdraw reports from circulation.[52] FINRA acknowledged that Commission staff may not review all securities-related filings contemporaneous with their submission, but pointed out in its response that Commission staff can review higher risk communications as needed.[53] FINRA stated its belief that this change would not appreciably impact investor protection and would allow FINRA to allocate its staff resources more efficiently to focus on reviewing higher risk communications more expeditiously.[54]

Generic Investment Company Communications

FINRA Rule 2210(c)(3)(A) requires members to file within 10 business days of first use retail communications "concerning" registered investment companies. FINRA proposes to revise this filing requirement to cover only retail communications that promote a specific registered investment company or family of registered investment companies. Thus, members would no longer be required to file generic investment company retail communications.

Two commenters supported this proposed change.[55] However, one commenter requested that FINRA clarify how this filing exclusion interrelates with Securities Act Rule 482.[56] In response to this request, FINRA stated in its response that it intends the registered investment company filing requirement to apply to any retail communication that is governed by either Securities Act Rule 482 or Investment Company Act Rule 34b–1, or that otherwise promotes or recommends a specific registered investment company or family of registered investment companies.[57] To the extent that a retail communication qualifies as a generic investment company advertisement under Securities Act Rule 135a, FINRA stated that a member would not be required to file the retail communication.[58]

Filing Exclusion for Templates

Under current rules, members are not required to file retail communications that are based on templates that were previously filed with FINRA but changed only to update recent statistical or other non-narrative information.[59] However, members are required to re-file previously filed retail communications that are subject to filing under FINRA Rule 2210(c) to the extent that the member has updated narrative information contained in the prior filing.

FINRA's proposal would expand the template filing exclusion also to allow members to include updated, non-predictive narrative descriptions of market events that occurred during the period covered by the communication and factual descriptions of portfolio changes without having to re-file the template. Similarly, a template could include information that is sourced from a registered investment company's regulatory documents filed with the Commission without triggering a requirement to re-file.

Two commenters supported this proposed change, but recommended amending the proposal.[60] One of these commenters recommended that the exclusion cover any non-predictive narrative information that comes from either an independent data provider or is sourced from an investment company's regulatory documents filed with the Commission.[61] This commenter recommended that, at the very least, this filing exclusion cover non-predictive narrative information that is (1) purchased or licensed directly from a third-party data provider, and (2) sourced from a Commission document.[62]

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[39] *See id.*

[40] *See* FINRA Letter at 3.

[41] *See* FINRA Rule 2210(c)(9)(A).

[42] *See* FINRA Letter at 3.

[43] *See id.; see also* FINRA Rule 2210(c)(7)(C).

[44] *See* FINRA Letter at 3.

[45] *See* FINRA Letter at 3.

[46] *See id.*

[47] *See id.*

[48] *See* FINRA Letter at 4.

[49] *See* SIFMA Letter at 2.

[50] *See* PIABA Letter at 4.

[51] *See* FINRA Letter at 4.

[52] *See id.*

[53] *See id.*

[54] *See id.*

[55] *See* FOLIO Letter at 3; *see also* SIFMA Letter at 3.

[56] *See* SIFMA Letter at 3.

[57] *See* FINRA Letter at 4–5.

[58] *See* FINRA Letter at 5.

[59] *See* FINRA Rule 2210(c)(7)(B).

[60] *See* Fidelity Letter at 2–3; *see also* ICI Letter at 3–4.

The second commenter recommended that the filing exclusion cover modifications limited to narrative factual changes provided by any "ranking entity," as such term is defined in FINRA Rule 2212(a).[63] The commenter also recommended that FINRA broaden the reference to "non-predictive narrative information that describes market events" to expressly permit commentary.[64] Finally, the commenter argued that otherwise the proposal could be unduly narrow and difficult for members to apply.[65]

One commenter opposed this change entirely, arguing that FINRA should review any narrative descriptions included in retail communications for misleading information.[66] The commenter cited several recent FINRA enforcement cases involving misleading retail communications as grounds for maintaining FINRA's current template filing exclusion.[67]

In its response, FINRA disagreed that Rule 2210 should exclude from filing *any* template updates that are based on any non-predictive narrative information that is sourced from an independent data provider.[68] FINRA stated its belief that such a standard could potentially permit inclusion of non-predictive narrative information that is intended to promote future sales of a fund, which FINRA believes should be re-filed.[69] However, FINRA stated if a member updates a template based on information that is sourced from a registered investment company's regulatory documents filed with the Commission, the update would qualify for this filing exclusion.[70] FINRA stated that this exclusion would apply even if an independent data provider supplies the information that is sourced from the Commission filings.[71]

Further, FINRA stated that it does not agree that the template filing exclusion should be based on whether narrative factual changes are provided by a ranking entity as defined in Rule 2212.[72] FINRA stated its belief that the better test is whether the information is sourced from Commission filings, rather than basing it on the provider's business model.[73]

FINRA stated that it does not agree that the template filing exclusion also should cover commentary.[74] As one commenter acknowledged, commentary often includes forward looking statements about the market or a particular fund.[75] Accordingly, FINRA believes these kinds of narrative updates should be re-filed.[76]

Finally, FINRA stated that it does not believe the enforcement cases cited by one commenter support its opposition to revising the template filing exclusion.[77] Those cases did not involve updates of templates, but rather instead involved misleading marketing materials that members would continue to be required to file even after the proposed change to the template filing exclusion.[78] FINRA noted that its members are already required to file mutual fund retail communications, and to the extent a member is using a retail communication that becomes misleading due to changes in market conditions, the member must either cease using the communication or revise the communication to make it accurate.[79] If the revision constitutes a material change to the retail communication, the member must re-file it.[80]

Moreover, FINRA noted, the FINRA Rule 2210 content standards apply regardless of whether a member re-files a retail communication with FINRA.[81] FINRA believes existing standards, even after this change to the template filing exclusion, strongly protect retail investors from receiving potentially misleading communications.[82] Accordingly, FINRA stated that it is not revising its proposed changes to the template filing exclusion.[83]

Bond Fund Volatility Ratings

FINRA Rule 2213 permits members to use communications that include ratings provided by independent third parties that address the sensitivity of the net asset value of a bond mutual fund's portfolio to changes in market conditions and the general economy, subject to a number of requirements. These requirements include that the communication be accompanied or preceded by the fund's prospectus, that it be filed at least 10 business days prior to use with FINRA, and that it include a number of disclosures. FINRA has proposed to revise these requirements by no longer requiring such communications to be accompanied or preceded by a fund prospectus, by allowing members to file such communications within 10 business days of first use rather than 10 days prior to use, and by streamlining some of the content standards and required disclosures.

One commenter opposed these changes on the ground that recent enforcement actions involving the sale of bond funds demonstrate that bond funds should be highly regulated.[84] FINRA responded that although it agrees that bond funds and members' sales of such funds should be effectively regulated, it disagrees that the proposed changes would undermine this goal.[85] FINRA noted that the commenter did not allege that any of its cited cases involved communications that included bond fund volatility ratings, and additionally pointed out that FINRA has not brought any enforcement actions involving violations of FINRA Rule 2213.[86]

In addition, FINRA stated that the proposed changes would not alter a FINRA member's obligation to file retail communications concerning bond mutual funds.[87] FINRA stated that the only filing change would be that retail communications that included a bond fund volatility rating would have to be filed within 10 business days of first use, similar to any other retail communication concerning a specific fund or fund family, rather than at least 10 business days prior to use.[88] Finally, FINRA stated that Rule 2213 also would continue to impose content and disclosure requirements that will provide investors with significant information about the meaning and limitations of volatility ratings.[89]

IV. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Partial Amendment No. 1, the comment letters, and FINRA's response to the comments, the Commission finds that the proposal, as modified by Partial Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[90] Specifically, the Commission finds that the rule change is consistent with Section 15A(b)(6) of the Exchange Act,[91] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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[61] *See* Fidelity Letter at 2–3.

[62] *See id.* at 2.

[63] *See* ICI Letter at 3.

[64] *See id.* at 4.

[65] *See id.*

[66] *See* PIABA Letter at 4–5.

[67] *See id.*

[68] *See* FINRA Letter at 6.

[69] *See id.*

[70] *See id.*

[71] *See id.*

[72] *See id.*

[73] *See id.*

[74] *See id.*

[75] *See* ICI Letter at 4 n.10.

[76] *See* FINRA Letter at 6.

[77] *See* FINRA Letter at 6.

[78] *See id.*

[79] *See id.*

[80] *See* FINRA Rule 2210(c)(7)(A).

[81] *See* FINRA Letter at 6.

[82] *See id.*

[83] *See id.*

[84] *See* PIABA Letter at 5–6.

[85] *See* FINRA Letter at 7.

[86] *See* FINRA Letter at 7.

[87] *See id.*

[88] *See id.*

[89] *See id.*

As stated in the Notice, FINRA believes that the proposal will "enhance the efficiency" of its communications with the public rules "with no reduction in investor protection." [92] Specifically, FINRA "believes that the proposed rule change will improve efficiency and reduce regulatory burden by reducing the filing requirements applicable to retail communications distributed by members and streamlining the content and disclosure requirements for retail communications that include bond mutual fund volatility ratings, while maintaining necessary investor protections." [93] With respect to the proposal for amending the new member filing requirements in FINRA Rule 2210(c)(1)(A), FINRA stated in its response upon consideration of the comments that were filed in opposition to the proposal, that "it is more prudent to defer making the change to post-use filing of new member retail communications at this time." [94] It therefore filed Partial Amendment No. 1 on September 1, 2016, in which it proposed that the new member pre-use filing requirements in FINRA Rule 2210(c)(1)(A) remain unchanged.[95]

Taking into consideration the comments and FINRA's response and proposed partial amendment, the Commission believes that the proposal is consistent with the Exchange Act. The Commission believes that the proposal promotes regulatory efficiency by selectively streamlining content and disclosure requirements for retail communications without undermining strong regulatory protections for investors.

The Commission further believes that FINRA's response, as discussed in more detail above, appropriately addressed commenters' concerns and adequately explained its reasons for modifying its proposal to maintain the current pre-use filing requirement for new member retail communications. The Commission believes that this modification responds to one of the primary concerns raised by the commenter opposing the proposal on the grounds that changing to a post-use filing requirement for new members would not provide adequate investor protection, and that a pre-use filing requirement has a deterrent effect on bad actors.[96] As noted above, FINRA plans to continue to "accumulate more data on the frequency and types of revisions required for new member retail communications before determining whether to consider any changes to this requirement in the future." [97] The Commission believes that the approach proposed by FINRA is appropriate and designed to protect investors and the public interest, consistent with Section 15A(b)(6) of the Exchange Act. For these reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

V. Solicitation of Comments on Partial Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as modified by Partial Amendment No. 1, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2016–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–018 and should be submitted on or before October 11, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Partial Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**. The revisions made to the proposal in Partial Amendment No. 1 will provide that the current pre-use filing requirement for new member retail communications remains unchanged, as currently set forth in FINRA Rule 2210(c)(1)(A). As noted above, the Commission believes that this modification responds to one of the primary concerns raised by the commenter opposing the proposal on the grounds that changing to a post-use filing requirement for new members would not provide adequate investor protection,[98] and notes that FINRA plans to continue to accumulate more data before determining whether to consider any changes to this requirement in the future.[99]

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[100] to approve the proposed rule change, as modified by

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[90] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[91] 15 U.S.C. 78o–3(b)(6).

[92] Notice at 39081.

[93] Notice at 39084.

[94] FINRA Letter at 3.

[95] Partial Amendment No. 1.

[96] *See* PIABA Letter at 2–3.

[97] FINRA Letter at 3.

[98] *See* PIABA Letter at 2–3.

[99] *See* FINRA Letter at 3.

[100] 15 U.S.C. 78s(b)(2).

Partial Amendment No. 1, on an accelerated basis.

VII. Conclusion

It is therefore ordered pursuant to Section 19(b)(2)[101] of the Exchange Act that the proposal (SR–FINRA–2016–018), as modified by Partial Amendment No. 1, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[102]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22418 Filed 9–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78831; File No. SR–NYSEARCA–2016–126]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Deadline for Implementing Rule 6.61(a)(2) and (3) Until September 30, 2016

September 13, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 6, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the deadline for implementing Rule 6.61(a)(2) and (3) until September 30, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the deadline for implementing Rule 6.61 (a)(2) and (3) until September 30, 2016. The Exchange has not met the current implementation deadline of July 31, 2016.

In March 2015, the Commission approved Rule 6.61, which provides a price protection risk mechanism for Market Maker quotes.[4] Rule 6.61 provides two layers of price protection to incoming Market Maker quotes, rejecting those Market Maker quotes that exceed certain parameters, as a risk mitigation tool.[5] The Exchange has implemented the first layer of price protection (the NBBO Reasonability Check) and had until one year from the date of the Approval Order to implement the second layer of protection (the Underlying Stock Price/Strike Price Check) pursuant to Commentary .01 to Rule 6.61, which was March 4, 2016.[6]

In March 2016, because the Exchange had not yet implemented the Underlying Stock Price/Strike Price Check, the Exchange extended the deadline to implement Rule 6.61(a)(2) and (3) until July 31, 2016 (the "July 31st Deadline").[7] Subsequent to this extension, the Exchange modified Commentary .01 to Rule 6.61 to exclude from the Underlying Stock Price/Strike Price Check certain securities for which there was no reliable (or in some cases any) last sale data.[8] Although the Exchange had finalized the technology related to the Underlying Stock Price/Strike Price Check, because this technology was packaged in a larger technology release that is currently being rolled out, the Exchange was not able to implement the technology by the July 31st Deadline. The Exchange is in the process of implementing the technology release that includes the Underlying Stock Price/Strike Price Check and plans to complete this implementation no later than the end of September 2016. The Exchange believes the proposed extension of the July 31st Deadline until September 30, 2016 would provide the Exchange with sufficient time to implement the functionality related to the rule. Moreover, the proposed change would update the rule to reflect the extended deadline, thus making clear to investors and the public that the Underlying Stock Price/Strike Price Check is not yet implemented.[9]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the

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[101] *Id.*

[102] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 74441 (March 4, 2015), 80 FR 12664 (March 10, 2015) (SR–NYSEArca–2014–150) (Approval Order); *see also* Securities Exchange Act Release No. 74018 (January 8, 2015), 80 FR 1982 (January 14, 2015) (SR–NYSEArca–2014–150) (Notice).

[5] The first layer of price protection assesses incoming sell quotes against the NBB and incoming buy quotes against the NBO (the "NBBO Price Reasonability Check"). Specifically, Rule 6.61(a)(1) provided that when an NBBO is available, a Market Maker quote would be rejected if it is priced a specified dollar amount or percentage through the contra-side NBBO. The second layer of price protection assesses the price of call or put bids against a specified benchmark (the "Underlying Stock Price/Strike Price Check"), per Rule 6.61(a)(2) and (3). This second layer of protection applies to bids in call options or put options when (1) there is no NBBO available, for example, during pre-opening or prior to conducting a re-opening after a trading halt, or (2) if the NBBO is so wide as to not reflect an appropriate price for the respective options series.

[6] *See* Securities Exchange Act Release No. 75156 (June 11, 2015), 80 FR 34756 (June 17, 2015) (SR–NYSEArca–2015–45).

[7] *See* Securities Exchange Act Release No. 77357 (March 14, 2016), 81 FR 14912 (March 18, 2016) (SR–NYSEARCA–2016–41).

[8] *See* Securities Exchange Act Release No. 77748 (April 29, 2016), 81 FR 27178 (May 5, 2016) (SR–NYSEARCA–2016–57).

[9] The Exchange has issued Trader Updates informing its market participants that the functionality related to the Underlying Stock Price/Strike Price Check is not yet available but is currently being implemented (together with the other technology updates with which it was packaged). *See, e.g.,* Trader Updates regarding Enhancements to Risk Control Functionality in Enhanced Certification Environment, dated 6/6/16, *available here, https://www.nyse.com/publicdocs/nyse/notifications/trader-update/NYSE%20Amex%20and%20Arca%20-%20Enhanced%20Risk%20Controls%20in%20Enhanced%20Cert.pdf* and regarding Risk Controls/Series Lookup Table Enhancements, dated 8/4/16, *available here, https://www.nyse.com/publicdocs/nyse/notifications/trader-update/NYSE%20Arca%20Options%20-%20Risk%20Controls%20Release.pdf.*

Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Specifically, the Exchange believes the proposal promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system because an extension of the July 31st Deadline would enable the Exchange to complete its implementation of the technology related to the Underlying Stock Price/Strike Price Check, which is currently being implemented as part of a larger technology release. Moreover, the proposed extension would update the rule to reflect the extended deadline for implementation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather, to extend the July 31st Deadline for implementing the functionality related to the Underlying Stock Price/Strike Price Check, which is currently being implemented as part of a larger technology release.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [12] of the Act and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to immediately extend the implementation deadline for the Underlying Stock Price/Strike Price Check without delay and provide the Exchange additional time to implement the technology associated with such price protection. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2016–126 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2016–126. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2016–126, and should be submitted on or before October 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22424 Filed 9–16–16; 8:45 am]

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[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78830; File No. SR–BOX–2016–44]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility To Change the Liquidity Fee and Credit Structure for PIP and COPIP Transactions

September 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2016, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule change [sic] the liquidity fee and credit structure for PIP and COPIP Transactions on the BOX Market LLC ("BOX") options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 1, 2016. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section II.A. of the BOX Fee Schedule to make changes to the liquidity fees and credits for PIP and COPIP Transactions.[5] Specifically, the Exchange proposes to amend the liquidity fees and credits for transactions where the PIP or COPIP Order is from the account of a Professional Customer, Broker Dealer or Market Maker ("Non-Public Customer"). The Exchange recently established separate fees and credits for Non-Public Customer PIP and COPIP Transactions.[6]

Unlike Public Customer PIP and COPIP transactions, liquidity fees and credits for Non-Public Customer PIP and COPIP transactions are only assessed if the Non-Public Customer PIP or COPIP Order does not trade with its contra order (the Primary Improvement Order). Under the current structure, if there are responses in the PIP or COPIP the "removal" credit is applied to the portion of the Non-Public Customer PIP or COPIP Order that does not trade with its Primary Improvement Order, and the Improvement Order responses are charged the "add" fee. The Exchange proposes to adjust the fee structure and instead apply any "removal" credits to the Primary Improvement Order instead of the Non-Public Customer PIP or COPIP Order. Improvement Order responses will continue to be charged the "add" fee and the liquidity fee and credit rates remain unchanged.

For example, if a Broker Dealer submits a PIP Order for the account of a Non-Public Customer to buy 100 contracts in the PIP and there are no responders, the PIP Order would execute against the matching Primary Improvement Order to sell 100 contracts and neither Order would be assessed a liquidity fee or credit. If, instead, the same PIP Order receives an Improvement Order response to sell 75 contracts, the PIP Order would execute against the Improvement Order for 75 contracts and the Primary Improvement Order for 25 contracts. Liquidity fees and credits would be assessed on the 75 contracts which executed against the Improvement Order, and under the proposed change, the Broker Dealer's Primary Improvement Order, rather than the PIP Order, would receive a removal credit for the 75 contracts. Accordingly, the Improvement Order response would be charged the add fee for the 75 contracts, the same as it would be today. The Exchange notes that there continue to be no liquidity fees or credits assessed on the remaining 25 contracts.

The Exchange also proposes to make other non-substantive edits to Section II.A. to clarify and support the proposed change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes amending the Liquidity Fees and Credits for Non-Public Customer PIP and COPIP transactions is reasonable, equitable and not unfairly discriminatory. Liquidity fees and credits on BOX do not directly result in revenue to BOX, but are meant to incentivize Participants to attract order flow. The current PIP and COPIP liquidity fee and credit structure is designed to incentivize valuable Public Customer PIP and COPIP Order flow, which the Exchange does not believe is necessary or appropriate for Non-Public Customer PIP and COPIP Order flow. The proposed change will shift the liquidity credit to the Primary Improvement Order that is submitting the Non-Public Customer PIP or COPIP Order to the auction for price improvement. The Exchange believes this is equitable and not unfairly discriminatory as the Initiating Participant no longer receives the benefit of a guaranteed execution against a Public Customer's PIP or COPIP Order[8] but continues to play a

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Transactions executed through Price Improvement Period ("PIP") and the Complex Order Price Improvement Period ("COPIP") auction mechanisms. All COPIP transactions will be charged per contract per leg.

[6] *See* Securities Exchange Act Release No. 78618 (August 18, 2016), 81 FR 57977 (August 24, 2016) (SR–BOX–2016–41).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] Under BOX Rule 7150(h)(a) [sic] and 7245(h)(a) [sic] the Initiating Participant retains trade

Continued

critical role by guaranteeing the Non-Public Customer PIP or COPIP Order an execution at the NBBO or at a better price, and is subject to market risk while the Non-Public Customer PIP Order or COPIP Order is exposed to other BOX Participants for the price improvement opportunity. Therefore, the Exchange believes for Non-Public Customer PIP and COPIP Orders it is equitable and not unfairly discriminatory to instead provide the liquidity credit to the Initiating Participant's Primary Improvement Order so that the Initiating Participant will continue to submit Non-Public Customer PIP or COPIP Orders to the PIP and COPIP. Further, the Exchange believes that the proposed change will have no impact on competition in the PIP or COPIP, as Responders will continue to be charged the same liquidity fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that amending where the liquidity credit is applied in Non-Public Customer PIP and COPIP Transactions will not impose a burden on competition among various Exchange Participants. The Exchange believes that the proposed changes will result in these Participants being credited appropriately for these transactions.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing exchanges. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2016–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–44, and should be submitted on or before October 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22423 Filed 9–16–16; 8:45 am]

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allocation privileges upon conclusion of the PIP or COPIP for up to forty percent (40%) of the remaining size of the PIP or COPIP Order after Public Customer orders are satisfied. If only one competing order matches the Initiating Participant's Single-Priced Primary Improvement Order at the final price level, then the Initiating Participant may retain priority for up to fifty percent (50%) of the remaining size of the PIP or COPIP Order after Public Customer orders are satisfied.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78828; File No. SR–BOX–2016–43]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility To Change the Fees and Credits for Facilitation and Solicitation Transactions

September 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2016, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule to make a number of changes to the fees and credits for Facilitation and Solicitation Transactions on the BOX Market LLC ("BOX") options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 1, 2016. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to make a number of changes to the fees and credits for Facilitation and Solicitation Transactions.[5]

Exchange Fees

The Exchange proposes to remodel the fee structure for Facilitation and Solicitation Transactions. Currently, Facilitation and Solicitation transactions are assessed per contract fees based upon account type and whether the order is a: (i) Agency Order;[6] (ii) Facilitation Order or Solicitation Order;[7] or (iii) Response in the Solicitation or Facilitation Auction Mechanisms.

First, the Exchange proposes to restructure the Facilitation and Solicitation Transactions fee schedule to differentiate between fees assessed in Penny and Non-Penny Pilot Classes. The Exchange then proposes to adjust certain fees throughout the Facilitation and Solicitation Transactions fee structure. Specifically, the Exchange proposes to increase the fees assessed for Non-Public Customers[8] for Agency Orders and Facilitation and Solicitation Orders to $0.15 from $0.00. Public Customer fees for Agency Orders and Facilitation and Solicitation Orders will remain at $0.00. The Exchange then proposes to adjust the fees assessed for Responses in the Solicitation or Facilitation Auction Mechanisms. Specifically, the Exchange proposes to assess a $0.25 fee in Penny Pilot Classes and a $0.40 fee in Non-Penny Pilot Classes, regardless of account type. Under the current fee structure, Public Customers are assessed $0.15, Broker Dealers and Professional Customers are assessed $0.27 and Market Makers are assessed $0.20 for Responses in the Solicitation or Facilitation Auction Mechanisms.

The proposed Facilitation and Solicitation Transactions fee structure will be as follows:

Account type	Agency order		Facilitation order or solicitation order		Responses in the solicitation or facilitation auction mechanisms	
	Penny pilot classes	Non-penny pilot classes	Penny pilot classes	Non-penny pilot classes	Penny pilot classes	Non-penny pilot classes
Public Customer	$0.00	$0.00	$0.00	$0.00	$0.25	$0.40
Professional Customer or Broker Dealer	0.15	0.15	0.15	0.15	0.25	0.40
Market Maker	0.15	0.15	0.15	0.15	0.25	0.40

Next, the Exchange proposes to establish Section I.C.1, Facilitation and Solicitation Transaction Rebate which will provide a $0.10 per contract rebate to Agency Orders executed through the Facilitation and Solicitation Auction Mechanisms where at least one party is a Non-Public Customer. For example, a Public Customer Agency Order that executes against a Non-Public Customer Order through the Facilitation Auction mechanism would receive a $0.10 rebate. Further, a Public Customer Agency Order that executes against a Public Customer Order through the Facilitation Auction mechanism would not receive a rebate.

Liquidity Fees and Credits

The Exchange then proposes to amend Section II.B. of the BOX Fee Schedule, (Liquidity Fees and Credits for Facilitation and Solicitation Transactions). Specifically, the Exchange proposes to decrease the fees and credits for Facilitation and Solicitation transactions in both Penny and Non-Penny Pilot Classes. The Exchange proposes to decrease the fees for adding liquidity in Facilitation and Solicitation transactions to $0.75 from $0.95 in Non-Penny Pilot Classes, and to $0.25 from $0.40 in Penny Pilot Classes. The Exchange also proposes to decrease the credits for removing liquidity in Facilitation and Solicitation transactions. Specifically, the Exchange proposes to decrease the credit to $0.75 from $1.00 in Non-Penny Pilot Classes, and $0.25 from $0.45 in Penny Pilot Classes.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

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[5] Transactions executed through the Solicitation Auction mechanism and Facilitation Auction mechanism.

[6] An Agency Order is a block-size order that an Order Flow Provider seeks to facilitate as agent through the Facilitation Auction or Solicitation Auction mechanism. Agency Orders can be submitted by all BOX account types.

[7] Facilitation and Solicitation Orders are the matching contra orders submitted on the opposite side of the Agency Order.

[8] Non-Public Customers are defined within the BOX Fee Schedule as Professional Customers, Broker Dealers and Market Makers.

[9] 15 U.S.C. 78f(b)(4) and (5).

Exchange Fees

The Exchange believes that remodeling the fee structure for Facilitation and Solicitation Transactions is reasonable, equitable and not unfairly discriminatory. In particular, the proposed revisions will allow the Exchange to apply separate fees for certain transactions in Penny and Non-Penny Pilot Classes, a distinction that is made in many other sections of the BOX Fee Schedule, including Section I.A (Non-Auction Transactions) and Section III.A (All Complex Orders).

The Exchange also believes the proposed fees for Non-Public Customers for Agency Orders and Facilitation and Solicitation Orders in Penny or Non-Penny Pilot Classes are reasonable, equitable and not unfairly discriminatory. Professional Customers and Broker Dealers and Market Makers are not currently charged for Agency Orders and Facilitation and Solicitation Orders. The proposal increases the fees for all Non-Public Customers to $0.15 for both Agency Orders and Facilitation and Solicitation Orders in Penny and Non-Penny Pilot Classes. The Exchange believes these fees are reasonable as they are in line with another exchange in the industry.[10] For example, at the ISE, the fee for both the initiating order and contra order in a Crossing Order[11] is $0.20 for Market Makers, Broker Dealers and Professional Customers, and $0.00 for Public Customers in Penny Pilot Classes. In Non-Penny Pilot Classes, the fees for the initiating order and contra order in a Crossing Order is $0.20 for Professional Customers and Broker Dealers, $0.25 for Market Makers and $0.00 for Public Customers.

The Exchange believes that charging Professional Customers and Broker Dealers and Market Makers more than Public Customers for Agency Orders and Facilitation and Solicitation Orders is reasonable, equitable and not unfairly discriminatory. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for Public Customer benefit. The Exchange believes that charging lower fees to Public Customers in Facilitation and Solicitation transactions is reasonable and, ultimately, will benefit all Participants trading on the Exchange by attracting Public Customer order flow.

The Exchange also believes the proposed fees for Responses in the Solicitation or Facilitation Auction Mechanisms in Penny and Non-Penny Pilot Classes are reasonable, and equitable. The proposal changes the fees to $0.25 and $0.40 in Penny and Non-Penny Pilot Classes, respectively, regardless of account type. Moreover, the proposed fees are competitive with fees charged by another options exchange.[12] For example, at the ISE, fees for Responses to Crossing Orders are $0.50, regardless of Participant type, in both Penny and Non-Penny Pilot Classes. The Exchange also notes that the proposed fees for Responses to Facilitation or Solicitation Orders are not unfairly discriminatory because they apply equally to all Participants.

The Exchange believes it is reasonable to establish different fees for Facilitation and Solicitation transactions in Penny Pilot Classes compared to transactions in Non-Penny Pilot Classes. The Exchange makes this distinction throughout the BOX Fee Schedule, including the Exchange Fees for PIP and COPIP Transactions. The Exchange believes it is reasonable to establish higher fees for Non-Penny Pilot Classes because these Classes are typically less actively traded and have wider spreads.

The Exchange also believes that establishing a $0.10 per contract rebate to Agency Orders executed through the Facilitation and Solicitation Auction Mechanisms where at least one party is a Non-Public Customer is reasonable, equitable and not unfairly discriminatory. The Exchange believes that it is reasonable and equitable to provide the opportunity to receive a rebate to incentivize Participants to direct Facilitation and Solicitation order flow to the Exchange, which will result [sic] ultimately benefit all Participant [sic] trading on the Exchange. The Exchange believes it is reasonable and appropriate that "Public Customer to Public Customer" transactions do not receive the proposed rebate, as these orders are never assessed Facilitation and Solicitation transaction fees and therefore should not also receive the benefit of the rebate. Further, the Exchange believes that the rebate is reasonable and equitable because other exchanges offer a similar distinction in Facilitation and Solicitation rebates.[13] Finally, the Exchange believes that the proposed changes are not unfairly discriminatory because the rebate would be uniformly applied to all Agency Orders where at least one party is a Non-Public Customer.

Liquidity Fees and Credits

The Exchange believes that lowering the liquidity fees and rebates for Facilitation and Solicitation transactions is reasonable and equitable. Under the proposed change the fee for adding liquidity will be lowered to $0.75 from $0.95 (Non-Penny Pilot Class) and to $0.25 from $0.40 (Penny Pilot Class). Accordingly, the credit for removing liquidity will be lowered to $0.75 from $1.00 (Non-Penny Pilot Class) and to $0.25 from $0.45 (Penny Pilot Class). The Exchange also notes that the proposed liquidity fees and credits for Facilitation or Solicitation transactions are not unfairly discriminatory because they apply equally to all Participants.

BOX believes that the changes to Facilitation and Solicitation transaction liquidity fees and credits are equitable and not unfairly discriminatory in that they apply to all categories of participants and across all account types. The Exchange notes that liquidity fees and credits on BOX are meant to offset one another in any particular transaction. The liquidity fees and credits do not directly result in revenue to BOX, but will simply allow BOX to provide the credit incentive to Participants to attract order flow. The Exchange believes it is appropriate to provide incentives to market participants to use the Facilitation and Solicitation auction mechanisms, because doing so may result in greater liquidity on BOX which would benefit all market participants. Further, the Exchange believes that the proposed changes are reasonable as they are in line with another exchange in the industry.[14]

Finally, the Exchange believes it is reasonable to establish different fees and credits for Facilitation and Solicitation transactions in Penny Pilot Classes compared to transactions in Non-Penny Pilot Classes. The Exchange makes this distinction throughout the BOX Fee

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[10] *See* International Securities Exchange ("ISE") Fee Schedule Section I available at *https://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf*.

[11] Under the ISE Fee Schedule Crossing Orders are any orders executed in the Exchange's auction mechanisms, including the Facilitation and Solicitation mechanisms.

[12] *See supra* note 10.

[13] *See* the ISE Fee Schedule, Section IV.A. (QCC and Solicitation Rebates). ISE offers a per contract rebate for agency orders in its Facilitation and Solicitation Auction Mechanisms. A higher rebate is given to Non-Customer to Customer Facilitation and Solicitation Transactions ($0.00 to $0.11 depending on volume) than Customer to Customer Facilitation and Solicitation Transactions ($0.00 to $0.03 depending on volume). *See also* Chicago Board Options Exchange ("CBOE") Fee Schedule, QCC Rate Table available at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf*. CBOE offers a per contract $0.10 credit for the equivalent of Facilitation and Solicitation transactions that occur between Non-Customer to Customer executions; however, no credit is offered for Customer to Customer executions.

[14] *Id.*

Schedule, including the liquidity fees and credits for PIP and COPIP Transactions. The Exchange believes it is reasonable to establish higher fees and credits for Non-Penny Pilot Classes because these Classes are typically less actively traded and have wider spreads. The Exchange believes that offering a higher rebate will incentivize order flow in Non-Penny Pilot issues on the Exchange, ultimately benefitting all Participants trading on BOX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed adjustments to the Facilitation and Solicitation Transaction fees will not impose a burden on competition among various Exchange Participants. Rather, BOX believes that the changes will result in the Participants being charged appropriately for their Facilitation and Solicitation Transactions and are designed to enhance competition in these auction mechanisms. Submitting an order is entirely voluntary and Participants can determine which type of order they wish to submit, if any, to the Exchange.

The Exchange believes that the proposed rebate for Facilitation and Solicitation transactions will not impose a burden on competition among various Exchange Participants. The Exchange believes the proposed rebate is attractive to market participants and is similar to rebates offered by other exchanges.[15] Further, the Exchange does not believe that the proposed rule change to not offer a rebate for "Public Customer to Public Customer" transactions will burden intramarket competition because although "Public Customer to Public Customer" transactions will not receive a rebate, these transactions are not assessed Facilitation and Solicitation transaction fees (unlike Non- "Customer to Customer" Facilitation and Solicitation transactions). The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change applies only to BOX and because other Exchanges have similar exclusions.[16]

The Exchange also believes that amending the proposed liquidity fees and credits for Facilitation and Solicitation Transactions will not impose a burden on competition among various Exchange Participants. The Exchange believes that the proposed changes will result with these Participants being charged or credited appropriately for these transactions.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing exchanges. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[17] and Rule 19b–4(f)(2) thereunder,[18] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2016–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–43, and should be submitted on or before October 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22421 Filed 9–16–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Council on Underserved Communities Advisory Board: Meeting

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the initial meeting of the

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[15] *See supra* note 13. CBOE does not offer a rebate (credit) for Customer to Customer executions.

[16] *Id.*

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

Council on Underserved Communities (CUC) Advisory Board.

DATES: The meeting will be held on Friday, October 14, 2016, at 2:00 p.m. EST.

ADDRESSES: The meeting will be held at the U.S. Small Business Administration, in the Administrator's Large Conference Room, located at 409 3rd St. SW., Suite 7000, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Amadi Anene by phone or email. His contact information is Amadi Anene, Senior Advisor to the Administrator, 409 Third Street SW., Washington, DC 20416, Phone, 202–205–0067 or email, *amadi.anene@sba.gov*.

Additionally, if you need accommodations because of a disability or require additional information, please contact Amadi Anene at the information above.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meeting of the Council on Underserved Communities Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator. CUC members will examine the obstacles facing small businesses in underserved communities and recommend to SBA policy and programmatic changes to help strengthen SBA's programs and services to these communities.

The purpose of this meeting is to discuss following issues pertaining to the CUC Advisory Board.:

—Provide updates on Action Items from the May 24, 2016 CUC meeting
—Determine the 2016/2017 CUC Agenda
—Discuss SBA plans to increase lending in underserved markets

Dated: September 8, 2016.

Miguel L' Heureux,

White House Liaison.

[FR Doc. 2016–22411 Filed 9–16–16; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2016–0036]

Request for Information on Strategies for Improving Work Outcomes for Individuals With Musculoskeletal Disabilities

AGENCY: Social Security Administration.

ACTION: Request for information.

SUMMARY: The Bipartisan Budget Act of 2015 amended section 234 of the Social Security Act, which authorizes us to plan and implement new demonstration projects that waive certain Social Security Disability Insurance (SSDI) program requirements in order to evaluate strategies for improving work outcomes for SSDI beneficiaries and applicants. This request for information (RFI) seeks public input on possible demonstration projects designed to improve employment and earnings outcomes for individuals with musculoskeletal impairments. The input we receive will inform our deliberations about the possible design of a future demonstration project using the section 234 authority.

DATES: Comments must be received by November 18, 2016.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2016–0036 so that we may associate your comments with the correct docket.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the "Search" function to find docket number SSA–2016–0036. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Susan Wilschke, Deputy Associate Commissioner for Research, Demonstration, and Employment Support, Office of Retirement and Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–8906, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Purpose

The SSDI program provides financial support for disabled individuals and their dependents. In 2015, the SSDI program provided more than $140 billion in benefits to 10.8 million Americans.[1] Given the large number of individuals who rely on SSDI and the interest in supporting employment efforts of those with disabilities when possible, policymakers need a strong evidentiary base from which to consider future program improvements and innovations that can strengthen the ability of individuals with disabilities to work.

This request for information offers interested parties, including States, community-based and other non-profit organizations, philanthropic organizations, researchers, and members of the public, the opportunity to provide information and recommendations on effective approaches for improving employment and earnings outcomes for individuals with musculoskeletal impairments. For the purposes of this notice, "musculoskeletal impairments" means any impairment included in section 1.00 of our Listing of Impairments, 20 CFR part 404, app. 1, affecting the musculoskeletal system and connective tissue. Impairments in this section include, but are not limited to, major joint dysfunction, spinal disorders, amputation, and soft tissue injuries.

Background

Musculoskeletal impairments are the primary diagnosis for 31 percent of all SSDI disabled workers and for 36 percent of disabled workers awarded SSDI in 2014.[2] A small, growing body of research involving studies of workers compensation and occupational health programs in the United States and in other countries suggests that the withdrawal of individuals with musculoskeletal impairments from the labor force is preventable with appropriate services, such as health care and work supports provided at the onset of a work disruption.

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[1] *https://www.ssa.gov/OACT/STATS/table4a6.html; https://www.ssa.gov/OACT/STATS/OASDIbenies.html.*

[2] *https://www.ssa.gov/policy/docs/statcomps/di_asr/index.html,* Tables 21 and 40.

Researchers and policy experts have suggested that it we may find it useful to conduct a demonstration project related to musculoskeletal impairments. For example, as part of the Committee for a Responsible Federal Budget's (CRFB) SSDI Solutions series, several researchers proposed a demonstration project involving health care and work supports for approximately 12 weeks after an individual's work is disrupted, but before he or she applies for SSDI.[3] This proposal notes that musculoskeletal impairments do not necessarily prevent individuals from working if those individuals have appropriate health care and work supports.

We expect that public input provided in response to this request will provide us with information that will allow us to determine if a musculoskeletal demonstration project will be useful and, if so, what interventions may be most valuable to consider in the demonstration project design. For example, a demonstration project could test whether coordinating and providing services can have a positive impact on a worker's ability to remain in the workforce. Those services may include case management, care coordination, and communication assistance between the employer, worker, medical providers, and others. Importantly, a potential demonstration project related to musculoskeletal impairments would improve the evidentiary base for future potential SSDI program reforms.

If we decide to pursue a musculoskeletal demonstration project, we would likely issue a contract for demonstration project implementation and evaluation.

Request for Information

Through this notice, we are soliciting feedback from interested parties on the potential value of a demonstration project related to providing health and work supports to individuals with musculoskeletal impairments, and on design aspects of a demonstration project aimed at improving employment and earnings outcomes for these individuals. Responses to this request will inform our decisions about whether to pursue a new demonstration project, and how such a project may be designed. This notice is for our internal planning purposes only and should not be construed as a solicitation or as an obligation on our part or on the part of any participating Federal agencies. We ask respondents to address the following questions, where possible, in the context of the discussion in this document. You do not need to address every question and should focus on those that relate to your expertise or perspectives. To the extent possible, please clearly indicate which question(s) you address in your response.

General Questions

1. What specific programs or practices have shown promise at the State or local level to assist workers with musculoskeletal impairments to remain in or re-enter the workforce?

2. What programs and practices might be especially applicable to individuals who might be enrolled in SSDI in the absence of interventions, and how might those programs and practices be incorporated into a potential demonstration project?

Detailed Questions

I. Target Population and Sites

1. Should we target specific types of musculoskeletal impairments in a demonstration project? If so, which ones, and why those?

2. What is an appropriate age range of individuals with musculoskeletal impairments for us to consider targeting for a demonstration project? Why?

3. Which populations should we consider targeting? How can we identify these populations? How many individuals enter these populations per year?

4. What types of sites (for example, State vocational rehabilitation agencies, medical practices, etc.) would be the most beneficial for us to consider including in a demonstration project?

5. Are there sites we could look to as exemplars based on current practices for serving individuals with musculoskeletal impairments? What evidence exists to suggest these sites are effectively providing early intervention services for workers with musculoskeletal impairments?

6. How might we consider structuring a demonstration project to investigate the potential for screening workers for their likelihood of responding to employment supports?

II. Health Services

7. What types of health services should we consider for workers with musculoskeletal impairments?

8. When should these services be provided?

9. To what extent should we prioritize certain services, whether case management, care coordination, or other on-site work support services?

10. Are there rehabilitative and pain management healthcare delivery models that we should consider combining with other work support services? What specific healthcare practices and models should we avoid or discourage?

11. What are the best ways to involve workers with disabilities in planning and implementing a demonstration project in order to ensure that demonstration project services will be effective in meeting their needs?

12. What health service program designs and interventions demonstrate promise for improving long-term employment outcomes for workers with musculoskeletal impairments? What evidence supports these interventions?

III. Employment and Job-Related Services

13. What specific employment related interventions related to skill development, job training, job placement, or pre- and post-placement services should we consider for individuals with musculoskeletal impairments?

14. What employment program designs and interventions demonstrate promise for improving long-term employment outcomes for workers with musculoskeletal impairments? What evidence supports these interventions?

Guidance for Submitting Documents

We ask that each respondent include the name and address of his or her institution or affiliation, if any, and the name, title, mailing and email addresses, and telephone number of a contact person for his or her institution or affiliation, if any.

Rights to Materials Submitted

By submitting material in response to this notice, you agree to grant us a worldwide, royalty-free, perpetual, irrevocable, nonexclusive license to use the material, and to post it publicly. Further, you agree that you own, have a valid license, or are otherwise authorized to provide the material to us. You should not provide any material you consider confidential or proprietary in response to this notice. We will not provide any compensation for material submitted in response to this notice.

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[3] Jennifer Christian, Thomas Wickizer, and A. Kim Burton, *Proposal to the CRFB SSDI Solutions Initiative for a Community-Focused Health and Work Service (HWS)* (2015) (available at: *http://www.webility.md/SSDI-HWS/Health%20and%20Work%20Service-submitted%20by%20Webility%202015-07-15.pdf).*

Carolyn W. Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2016–22404 Filed 9–16–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9725]

U.S. National Commission for UNESCO Notice of Teleconference Meeting

The U.S. National Commission for UNESCO ("Commission") will hold a conference call on Tuesday, October 11, 2016, from 1:00 p.m. until 2:00 p.m. Eastern Daylight Time. The purpose of the teleconference meeting is to consider the recommendations of the Commission's World Heritage Subcommittee. The Subcommittee was asked to provide recommendations of sites for consideration to be listed on the U.S. World Heritage Tentative List. This list will be the basis for U.S. nominations for inscription onto UNESCO's World Heritage List. The recommendations resulting from this discussion will be forwarded from the Department of State to the Department of the Interior. More information on the World Heritage Tentative List process can be found at *https://www.nps.gov/subjects/internationalcooperation/revised_tentative_list.htm.* The Commission will accept brief oral comments during a portion of this conference call. The public comment period will be limited to approximately 20 minutes in total, with two minutes allowed per speaker. Please note that there might be an opportunity for extended comments later if the Department of the Interior posts draft tentative sites in the **Federal Register**. For more information, or to arrange to participate in the conference call, individuals must make arrangements with the Executive Director of the National Commission by October 7, 2016.

The National Commission may be contacted via email at *DCUNESCO@state.gov* or Telephone (202) 663–2685; Fax (202) 663–3194. The Web site can be accessed at: *http://www.state.gov/p/io/unesco/.*

Dated: September 13, 2016.

Allison Wright,

Executive Director, U.S. National Commission, for UNESCO, Department of State.

[FR Doc. 2016–22505 Filed 9–16–16; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice: 9723]

E.O. 13224 Designation of Omar Diaby, aka Omar al-Diaby, aka Omar Omsen, aka Omar Oumsen, aka Oumar Diaby as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the entity known as Omar Diaby, also known as Omar al-Diaby, also known as Omar Omsen, also known as Omar Oumsen, also known as Oumar Diaby, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 8, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–22500 Filed 9–16–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 9722]

E.O. 13224 Designation of Fathi Ahmad Mohammad Hammad, aka Fathi Ahmad Hammad, aka Fathy Ahmed Hamad, aka Fathi Hamad as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Fathi Ahmad Mohammad Hammad, also known as Fathi Ahmad Hammad, also known as Fathy Ahmed Hamad, also known as Fathi Hamad, committed or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: August 12, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–22497 Filed 9–16–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 9724]

U.S. Department of State Advisory Committee on Private International Law: Public Meeting on Micro-, Small-, and Medium Sized Enterprises

The Office of the Assistant Legal Adviser for Private International Law, Department of State, gives notice of a public meeting to discuss ongoing work in the United Nations Commission on International Trade Law (UNCITRAL) related to micro, small, and medium sized enterprises. The public meeting will take place on Thursday, September 29, 2016, from 9:30 a.m. until 12:00 p.m. EDT. This is not a meeting of the full Advisory Committee.

In 2013 UNCITRAL established a working group aimed at reducing the legal obstacles faced by MSMEs throughout their life cycle, and in particular those in developing countries. UNCITRAL further directed that the work should start with a focus on the legal issues surrounding the simplification of incorporation. At its upcoming session, the UNCITRAL MSME Working Group will consider draft recommendations on a legislative guide for a limited liability organization (UN Doc. A/CN.9/WG.I/WP.99 and Add.1). The draft text, along with the reports of earlier sessions of the

Working Group are available at *http://www.uncitral.org/uncitral/en/index.html.*

Time and Place: The meeting will take place on Thursday September 29, 2016, from 9:30 a.m. until 12:00 p.m. via a teleconference. Those who cannot participate but wish to comment are welcome to do so by email to Mike Dennis at *DennisMJ@state.gov.*

Public Participation: This meeting is open to the public. If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information.

Dated: September 12, 2016.

Michael J. Dennis,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, U.S. Department of State.

[FR Doc. 2016–22491 Filed 9–16–16; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty Fourth Meeting of SC–217 Aeronautical Databases

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Twenty Seventh Meeting of the SC–217 Aeronautical Databases.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Twenty Seventh Meeting of SC–217 Aeronautical Databases.

DATES: The meeting will be held November 29 to December 2, 2016, 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at: 202 Burlington Road, Bedford, MA 01730–1420.

FOR FURTHER INFORMATION CONTACT: Karan Hoffmann at *khoffman@rtca.org* or (202) 330–0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Twenty Seventh Meeting of SC–217 Aeronautical Databases. The agenda will include the following:

Monday, November 28th

Working Session

For those able to attend, a working group session will be held to progress on action items ahead of the plenary.

Tuesday, November 29th (9:00 a.m.–11:00 a.m.)

Opening Plenary Session

1. Co-Chairmen's remarks and introductions
2. Housekeeping
3. Approve minutes from 26th meeting
4. Review and approve meeting agenda for 27th meeting
5. Action item list review
6. Presentations (TBD)
   a. Status of EASA PBN IR

Tuesday, November 29th (11:00 a.m.) through Thursday, December 1st (5:00 p.m.)

Working Group Sessions

1. Sub-team report-outs
   - Document structure
   - Background/PBN principles
   - Data preparation rules
   - Data quality
   - Procedure encoding
   - Aeronautical information basics
2. Draft of requirements tables based on data catalog
3. Review of action item inputs
   a. Working Papers
   b. Discussion Papers
   c. Information Papers
4. New business

Friday December 2nd (9:00 a.m.–12:00 p.m.)

Closing Plenary Session

Meeting wrap-up: main conclusions and way forward
Review of action items
Next meetings
Any other business

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 13, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17 NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–22396 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0220]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 58 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before October 19, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0220 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 58 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Ardell M. Banta, Sr.

Mr. Banta, 67, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Banta understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Banta meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Ronald I. Barker

Mr. Barker, 59, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Barker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a CDL from Michigan.

William J. Bartlett

Mr. Bartlett, 45, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bartlett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bartlett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Iowa.

Griselda R. Begay

Ms. Begay, 57, has had ITDM since 2003. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Begay understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Begay meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2016 and certified that she has stable nonproliferative diabetic retinopathy. She holds an operator's license from Utah.

Darrell L. Boehning

Mr. Boehning, 58, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Boehning understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boehning meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

John M. Bracken

Mr. Bracken, 63, has had ITDM since 2000. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bracken understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bracken meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Thomas E. Brennan

Mr. Brennan, 55, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brennan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brennan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Matthew W. Brown

Mr. Brown, 47, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Oklahoma.

Norman Brown

Mr. Brown, 62, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maine.

Walter L. Coon, II

Mr. Coon, 54, has had ITDM since 2009. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Coon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Coon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Roy L. Cox

Mr. Cox, 66, has had ITDM since 2003. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cox understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cox meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from North Carolina.

Robert S. Downie, Jr.

Mr. Downie, 55, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Downie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Downie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Frank A. Eagen

Mr. Eagen, 47, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Eagen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eagen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

Joseph F. Figueroa

Mr. Figueroa, 52, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Figueroa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Figueroa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

Ernest R. Grasso

Mr. Grasso, 51, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Grasso understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Grasso meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

Nolan Graves

Mr. Graves, 75, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Graves understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Graves meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Darryl W. Grimes

Mr. Grimes, 47, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Grimes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Grimes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Tennessee.

Henry L. Hardin

Mr. Hardin, 75, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hardin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hardin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

John L. Hargis, Jr.

Mr. Hargis, 50, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hargis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hargis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Michael G. Haskins

Mr. Haskins, 61, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Haskins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Haskins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Howard C. Hayes

Mr. Hayes, 52, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hayes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hayes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Oklahoma.

Kevin L. Hess

Mr. Hess, 21, has had ITDM since 2002. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hess understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hess meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Washington.

Joshua P. Hewson

Mr. Hewson, 29, has had ITDM since 2001. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hewson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hewson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Dakota.

Karen A. Holzwarth

Ms. Holzwarth, 64, has had ITDM since 2011. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Holzwarth understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Holzwarth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Pennsylvania.

Michael R. Jacklin

Mr. Jacklin, 47, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jacklin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jacklin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

Richard P. Janney

Mr. Janney, 70, has had ITDM since 2001. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Janney understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Janney meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Delaware.

Hershell D. Jones

Mr. Jones, 37, has had ITDM since 2004. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jones understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jones meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Kentucky.

William H. Kline

Mr. Kline, 60, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kline understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kline meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Mitchell A. Langford

Mr. Langford, 55, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Langford understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Langford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

Michael J. Lipovsky

Mr. Lipovsky, 27, has had ITDM since 2006. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lipovsky understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lipovsky meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Connecticut.

Edward J. Manley

Mr. Manley, 45, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Manley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Manley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Joshua L. Mattas

Mr. Mattas, 32, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mattas understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mattas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Raymond E. McGuire

Mr. McGuire, 51, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McGuire understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McGuire meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Ismael Mejia

Mr. Mejia, 67, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mejia understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mejia meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

James L. Morgan, Jr.

Mr. Morgan, 39, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Morgan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morgan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Shane M. Olden

Mr. Olden, 31, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Olden understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Olden meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Wade B. Patrick

Mr. Patrick, 61, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Patrick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Patrick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Shawn B. Persinger

Mr. Persinger, 46, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Persinger understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Persinger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wyoming.

Timothy J. Peterson

Mr. Peterson, 30, has had ITDM since 1999. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Peterson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Peterson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Nebraska.

Donald E. Ramper, Jr.

Mr. Ramper, 62, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ramper understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ramper meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Jose W. Rodriguez

Mr. Rodriguez, 56, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rodriguez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rodriguez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Wisconsin.

Stewart R. Rowell

Mr. Rowell, 58, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rowell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rowell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

William T. Shreeve

Mr. Shreeve, 55, has had ITDM since 1974. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shreeve understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shreeve meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Tennessee.

David L. Smith

Mr. Smith, 49, has had ITDM since 1999. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

James A. Stock

Mr. Stock, 49, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stock understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Marlon Taylor

Mr. Taylor, 53, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Taylor understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Taylor meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Eddie B. Thacker

Mr. Thacker, 25, has had ITDM since 1995. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Thacker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thacker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Kentucky.

Earnest A. Tillman, III

Mr. Tillman, 56, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tillman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tillman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Florida.

William C. Tomlinson

Mr. Tomlinson, 27, has had ITDM since 1992. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tomlinson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tomlinson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

David E. Walters

Mr. Walters, 62, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Walters understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walters meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Mexico.

Brennan S. Watkins

Mr. Watkins, 26, has had ITDM since 1994. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Watkins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Watkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Vermont.

Julius Williams

Mr. Williams, 53, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Williams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Williams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Mississippi.

Kevin A. Wilson

Mr. Wilson, 34, has had ITDM since 2007. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

Jeffrey S. Wine

Mr. Wine, 57, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wine understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wine meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

John T. Witcraft

Mr. Witcraft, 51, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Witcraft understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Witcraft meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

William B. Witzel

Mr. Witzel, 33, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Witzel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Witzel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from South Carolina.

P. Wayne Woodward, Jr.

Mr. Woodward, 53, has had ITDM since 1990. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Woodward understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Woodward meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Richard Wynn

Mr. Wynn, 29, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wynn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wynn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C.. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0220 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0220 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to this notice.

Issued on: September 2, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–22452 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–EX–P

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[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2016–0007]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on extension of a currently approved collection of information.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) renewed approval for an existing collection of information for brake fluid labeling in 49 CFR 571.116, "Motor Vehicle Brake Fluids." Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This existing collection involves labeling requirements for manufacturers and packagers of brake fluids, as well as packagers of hydraulic system mineral oils. The information to be collected will be used to and/or is necessary to insure the following: The contents of the container are clearly stated; these fluids are used for their intended purpose only; and, the containers are properly disposed of when empty. The **Federal Register** notice with a 60-day comment period was published on March 2, 2016 (81 FR 10952).

DATES: Comments must be received on or before October 19, 2016.

ADDRESSES: Comments must refer to the docket number cited at the beginning of this notice, and may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal Holidays. Telephone: 1–800–647–2251.

Instructions: All submissions must include the docket number for this document. Please identify the collection of information for which a comment is provided by referencing the OMB Control Number, 2127–0521. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Hallan, (202) 366–9146, NHTSA, U.S. Department of Transportation, 1200

New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) How to enhance the quality, utility, and clarity of the information to be collected;

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA published a notice on March 2, 2016, in the **Federal Register** providing a 60-day comment period, and we received no public comments on the renewal of this information collection (81 FR 10952). Today's notice provides a 30-day comment period in which public comments on the renewal of this information collection may be submitted to OMB.

NHTSA asks for public comments on the following collection of information:

Title: Labeling of Motor Vehicle Brake Fluid Containers in 49 CFR 571.116.

OMB Control Number: 2127–0521.

Form Numbers: This collection of information uses no standard form.

Type of Request: Extension of a currently approved collection of information.

Summary of the Collection of Information: In 49 CFR 571.116, (Federal Motor Vehicle Safety Standard No. 116, "Motor Vehicle Brake Fluid") there are performance and design requirements for motor vehicle brake fluids and hydraulic system mineral oils. In Section 5.2.2 of the standard, there are also labeling requirements for manufacturers and packagers of brake fluids, as well as packagers of hydraulic system mineral oils.

Description of the Need for the Information and the Use of the Information: Properties of these fluids and their use necessitate the package labeling information specified in this standard. The information on the label of a container of motor vehicle brake fluid or hydraulic system mineral oil is necessary to insure: The contents of the container are clearly stated; these fluids are used for their intended purpose only; and the containers are properly disposed of when empty. Without this labeling requirement, there could be improper use or storage of these brake fluids, which would have dire safety consequences for the operators of vehicles or equipment in which they are used.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information): We estimate that the collection of information affects 200 respondents annually, which are manufacturers and packagers of brake fluids and hydraulic mineral oils.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: The estimated annual burden is as follows:

Estimated Number of Respondents: 200.

Estimated Number of Responses (labels): 70,000,000.

Estimated Total Annual Burden: 7,000 hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.95.

Issued on: September 8, 2016.

Lori K. Summers,

Acting Associate Administrator for Rulemaking, National Highway Traffic Safety Administration.

[FR Doc. 2016–22068 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2016–0027]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** notice (81 FR 13874) with a 60-day comment period soliciting comments on the proposed information collection for the agency's existing collection of vehicle safety information (OMB Control Number 2127–0629) was published on March 15, 2016. No comments were received.

DATES: Comments must be received on or before October 19, 2016.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Johanna Lowrie, U.S. Department of Transportation, NHTSA, Room W43–410, 1200 New Jersey Ave. SE., Washington, DC 20590. Ms. Lowrie's telephone number is (202) 366–5269. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Obtaining Vehicle Information for the General Public.

OMB Control Number: 2127–0629.

Type of Request: Information Collection Renewal.

Affected Public: Manufacturers that sell motor vehicles that have a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less in the United States.

Abstract: NHTSA's mission is to save lives, prevent injury, and reduce motor vehicle crashes. Consumer information programs are an important tool for improving vehicle safety through market forces. For over 30 years, under its New Car Assessment Program, NHTSA has been providing consumers with vehicle safety information such as frontal and side crash results, crash avoidance performance test results, rollover propensity, and the availability of a wide array of safety features provided on each vehicle model. In addition, the agency has been using this safety feature information when responding to consumer inquiries and analyzing rulemaking petitions that requested the agency to mandate certain safety features.

The information collected annually by the agency includes the following:

- Vehicle make, model, body style, certification type, projected sales volume, availability date, etc.,
- Crashworthiness features (*i.e.,* adjustable upper belt anchorages, seat belt pretensioners, load limiters, etc.),
- Crash avoidance features (*i.e.,* lane departure warning, forward collision warning, blind spot detection, crash imminent braking, dynamic brake support systems, etc.),
- Automatic crash notification systems,
- Event data recorders,
- Automatic door locks (ADL),
- Anti-theft devices,
- Static Stability Factor (SSF) rating information,
- Lower Anchors and Tethers for Children (LATCH) restraint system, and
- Side air bag information that would include whether the side air bags meet the requirements from the Technical Working Group (TWG) on Out-of-Position occupants.

NHTSA has another information collection to obtain data related to motor vehicle compliance with the agency's Federal motor vehicle safety standards. Although the consumer information collection data is distinct and unique from the compliance data, respondents to both collections are the same. Thus, the consumer information collection is closely coordinated with the compliance collection to enable responders to assemble the data more efficiently. The burden is further made easier by sending out electronic files to the respondents in which the data is entered and electronically returned to the agency.

The consumer information collected will be used on the agency's Web site (*www.safercar.gov*), in the "Purchasing with Safety in Mind: What to look for when buying a new vehicle" and "Buying a Safer Car for Child Passengers" brochures, in other consumer publications, as well as for internal agency analyses and responses to consumer inquiries.

Estimated Number of Respondents: 21.

Estimated Total Annual Burden: 800 hours.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to OMB are most effective if OMB receives them within 30 days of publication.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: September 8, 2016.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2016–22066 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0097]

Public Meeting Regarding NHTSA's Research Portfolio

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Announcement of public meeting.

SUMMARY: NHTSA is announcing a public meeting to present information describing our vehicle and behavioral safety research portfolio and outline the activities we plan to pursue over the next 12 to 16 months. Each year, NHTSA executes a broad array of research in the areas of crash avoidance, electronics systems safety, biomechanics, crashworthiness, and behavioral research. The purpose of this meeting is to present and describe research projects in these areas that the agency will be focusing on to enhance safety.

DATES: NHTSA will hold the public meeting on September 27, 2016, in Detroit, MI. The meeting will start at 10:00 a.m. and continue until 4:00 p.m., local time. Check-in (through security) will begin at 9 a.m.

ADDRESSES: The meeting will be held at the Patrick V. McNamara Federal Building located at 477 Michigan Avenue, Detroit, MI 48226, Bottom Floor. This facility is accessible to individuals with disabilities.

FOR FURTHER INFORMATION CONTACT: If you have questions about the public meeting, please contact Inez Finley at 937–666–3289, by email at *Inez.finley@dot.gov,* or by U.S. Mail at NHTSA's Vehicle Research & Test Center, P.O. Box B37, Building 60, 10820 State Route 347, East Liberty, Ohio 43319.

Registration is necessary for all attendees. Attendees should register at *https://goo.gl/forms/FEO60sf0tOQDBqlU2* by September 22, 2016. Please provide name, affiliation, email, and indicate whether you require accommodations such as a sign language interpreter. Space is limited, so advanced registration is highly encouraged.

Should it be necessary to cancel the meeting due to inclement weather or other emergency, NHTSA will take all available measures to notify registered participants.

NHTSA will conduct the public meeting informally, and technical rules of evidence will not apply. We will arrange for a written transcript of the meeting and keep the official record open for 30 days after the meeting to allow submission of public comments. You may make arrangements for copies of the transcripts directly with the court reporter, and the transcript will also be posted in the docket when it becomes available.

Written Comments: Attendees are welcome to submit written comments and other supporting information during the 30 day comment period. Please submit all written comments no later than October 27, 2016 by any of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail*: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

- *Fax:* 202–366–1767.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below.

Docket: For access to the docket go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/privacy.html.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information to the Chief Counsel, NHTSA, at 1200 New Jersey Avenue SE., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should submit a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

SUPPLEMENTARY INFORMATION:

Background

Each year, NHTSA executes a broad array of research in the areas of crash avoidance, electronics systems safety, biomechanics, crashworthiness, and behavioral research. The purpose of this meeting is to present and describe research projects in these areas that the agency will be focusing on over the next year or more to enhance vehicle safety. For more information on NHTSA's research programs, please visit our Web site at: *www.nhtsa.gov.*

Draft Agenda

09:00–10:00—Arrival/Check-In
10:00–12:00—Morning Public Meeting Session (Crash Avoidance and Electronic Systems Safety Research)
12:00–13:00—Lunch Break
13:00–15:30—Afternoon Public Meeting Session (Biomechanics, Crashworthiness and Behavioral Safety Research)
15:30–16:00—Open discussion (Q&A)
16:00—Adjourn

Public Meeting Topics

NHTSA will provide information on the following topics during the morning and afternoon sessions of the meeting.

- Crash Avoidance Research (driver assistance systems, human factors)
- Electronic Systems Safety/Emerging Technologies Research (electronics reliability, cybersecurity, automated vehicles)
- Biomechanics/Human Injury Research
- Crashworthiness/Occupant Protection Research
- Behavioral Safety Research

Issued in Washington DC on: September 13, 2016 under authority delegated by 49 CFR 1.95.

Nathaniel Beuse,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2016–22382 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Volkswagen Group of America, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Volkswagen Group of America, Inc.'s (Volkswagen) petition for exemption of the mid-size sports utility vehicle (SUV) line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard* (Theft Prevention Standard). Volkswagen also requested confidential treatment for specific information in its petition. While official notification granting or denying its request for confidential treatment will be addressed by separate letter, no confidential information provided for purposes of this document has been disclosed.

DATES: The exemption granted by this notice is effective beginning with the 2018 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated April 28, 2016, Volkswagen requested an exemption from the parts-marking requirements of the Theft Prevention Standard for its mid-size SUV line beginning with MY 2018. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Volkswagen provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its mid-size SUV line. Volkswagen stated that its MY 2018 mid-size SUV line will be installed with its fifth generation, transponder-based electronic engine immobilizer antitheft device as standard equipment on the entire vehicle line. Key components of the antitheft device will include an immobilizer, engine control unit (ECU), instrument cluster, warning sign, reading coil and an adapted transponder ignition key (key fob). Volkswagen also stated that it will offer an audible and visible alarm system as optional equipment on its mid-size SUV line.

Volkswagen's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In addressing the specific content requirements of 543.6, Volkswagen provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Volkswagen stated that the antitheft device has been tested for compliance to its corporate requirements, including those for electrical and electronic assemblies in motor vehicles related to performance.

Volkswagen stated that its immobilizer device is aimed to actively incorporate the engine control unit into the evaluation and monitoring process. Volkswagen also stated that activation of its immobilizer device occurs automatically after the engine is switched off. Deactivation of the immobilizer device occurs when the ignition is turned on or the key fob is recognized by the immobilizer control unit. Specifically, when turning on the ignition on/off switch, the key transponder sends a fixed code to the immobilizer control unit. If this is identified as the correct code, a variable code is generated in the immobilizer control unit and sent to the transponder. Volkswagen stated that a secret arithmetic process is then started according to a set of specific equations and that a new variable code is generated every time the immobilizer goes through the secret computing process. The results of the computing process are evaluated in the control unit and if verified, the vehicle key is acknowledged as correct. The engine control unit then sends a variable code to the immobilizer control unit for mutual identification. If all the data matches, the vehicle can be started.

In support of its belief that its antitheft device will be as or more effective in reducing and deterring vehicle theft than the parts-marking requirement, Volkswagen referenced the effectiveness of immobilizer devices installed on other vehicles for which NHTSA has granted exemptions. Specifically, Volkswagen referenced information from the Highway Loss Data Institute which showed that BMW vehicles experienced theft loss reductions resulting in a 73% decrease in relative claim frequency and a 78% lower average loss payment per claim for vehicles equipped with an immobilizer. Volkswagen also stated that the National Crime Information Center's (NCIC) theft data showed that there was a 70% reduction in theft experienced when comparing the MY 1987 Ford Mustang vehicle thefts (with immobilizers) to MY 1995 Ford Mustang vehicle thefts (without immobilizers). Additionally, Volkswagen stated that the proposed device is similar to the antitheft device installed on the Audi Q5 and the Lexus RX vehicle lines. The agency granted in full the petition for the Audi Q5 vehicle line beginning with model year 2009, (see 73 FR 18606, April 4, 2008), and the Lexus RX vehicle line beginning with MY 2017, (see 81 FR 8592, February 19, 2016). The agency notes that the average theft rate for the Audi Q5 vehicle line using three MYs' data (MYs 2012 through 2013) is 0.5014 respectively. There is no current theft rate data available for Volkswagen's new mid-size SUV line. The agency agrees that the device is substantially similar to devices installed on other vehicle lines for which the agency has already granted exemptions.

Based on the evidence submitted by Volkswagen, the agency believes that the antitheft device for the mid-size SUV line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Volkswagen has provided adequate reasons for its belief that the antitheft device for the mid-size SUV line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Volkswagen provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full Volkswagen's petition for exemption for the Volkswagen mid-size SUV line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard. As a condition to the formal granting of Volkswagen's petition for exemption from the parts-marking requirements of 49 CFR part 541 for the MY 2018 mid-size SUV line, the agency fully expects Volkswagen to notify the agency of the nameplate for the vehicle line prior to its introduction into the United States commerce for sale.

If Volkswagen decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Volkswagen wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Issued in Washington, DC, September 8, 2016, under authority delegated in 49 CFR part 1.95.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2016–22060 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nomination for Appointment to the Veterans' Advisory Committee on Education (VACOE)

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA), Education Service is seeking nominations of qualified candidates to be considered for appointment as a member of the Veterans' Advisory Committee on Education (VACOE). The Committee is authorized by statute, 38 U.S.C. 3692, and operates under the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. The Committee provides advice to the Secretary of Veterans Affairs on the administration of education and training programs, like the Post-9/11 GI Bill, and recommends new and improved education benefit programs and services for Veterans and Servicepersons, Reservists and Guard personnel, and for dependents of Veterans under chapters 30, 32, 33, 35, and 36 of title 38, and chapters 1606 of title 10, United States Code. The Committee submits its recommendations and reports to the Secretary and may also submit its reports to Congress.

The Secretary appoints Committee members and determines the length of terms in which Committee members may serve. A term of service for any member may not exceed two years. The Secretary can reappoint members for additional terms, but individual members cannot serve more than two consecutive terms. Each year, there are several vacancies on the Committee as members' terms expire. Education Service is seeking candidates who reflect the population the Committee serves.

In accordance with the Office of Management and Budget guidance, federally registered lobbyists may not serve on Federal advisory committees in their individual capacity. Additional information regarding this issue can be found at *https://www.federalregister.gov/articles/2014/08/13/2014-19140/revised-guidance-on-appointment-of-lobbyists-to-federal-advisory-committees-boards-and-commissions.*

DATES: All nominations for membership on the Committee must be received by October 15, 2016, no later than 4:00 p.m., Eastern Standard Time. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to VACOE, Designated Federal Officer (DFO), Barrett Y. Bogue, Department of Veterans Affairs, 810 Vermont Ave. NW., (223D), Washington, DC 20420, or emailed to *Barrett.Bogue@va.gov.*

FOR FURTHER INFORMATION, CONTACT: Mr. Barrett Y. Bogue, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (223D), 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 461–9800 or email at *Barrett.Bogue@va.gov.*

SUPPLEMENTARY INFORMATION: The Committee is currently comprised of 10 members. The Committee consists of members appointed by the Secretary from the general public, including: Representatives of women Veterans; individuals who are recognized authorities in fields of education; representatives of Veterans with service-connected disabilities, including at least one female Veteran with a service-connected disability and at least one male Veteran with a service-connected disability; and Veterans who are recently separated from service in the Armed Forces.

The Committee meets at least once annually, which may include a site visit to a military installation. In accordance with Federal Travel Regulations, VA will cover travel expenses—to include per diem—for all members of the Committee, for any travel associated with official Committee duties.

The Department makes every effort to ensure that the membership of VA federal advisory committees is fairly balanced in terms of points of view represented and the Committee's function. To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications, including but not limited to prior military experience and military deployments, experience working with Veterans education and in large and complex organizations, and subject matter expertise in the subject areas described above. We ask that nominations include information of this type so that VA can ensure a balanced Committee membership. Appointments to this Committee shall be made without discrimination based on a person's race, color, religion, gender, sexual orientation, gender identity, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership.

Requirements for Nomination Submission: Nominations should be typed, 12 point font (one nomination per nominator). A nomination package should include:

(1) A cover letter from the nominator that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes that qualify the nominee for service in this capacity), and a statement confirming that she/he is not a federally registered lobbyist.

(2) a current resume that is no more than four pages in length, including name, mailing address, telephone numbers, and email address; the resume should show professional work experience, and Veterans service involvement, especially service that involves Veterans' education issues.

(3) the nominee's curriculum vitae, any relevant Veterans service activities she/he is currently engaged in, the military branch affiliation and timeframe of military service (if applicable).

(4) a summary of the nominee's experience and qualifications relative to the membership considerations described above.

Dated: September 14, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–22445 Filed 9–16–16; 8:45 am]

BILLING CODE 8320–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Monday,
No. 181 September 19, 2016

Part II

Commodity Futures Trading Commission

17 CFR Parts 37, 38, and 49
System Safeguards Testing Requirements; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 37, 38, and 49

RIN 3038–AE30

System Safeguards Testing Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is adopting final rules amending its current system safeguards rules for designated contract markets, swap execution facilities, and swap data repositories, by enhancing and clarifying current provisions relating to system safeguards risk analysis and oversight and cybersecurity testing, and adding new provisions concerning certain aspects of cybersecurity testing. The final rules clarify the Commission’s current system safeguards rules for all designated contract markets, swap execution facilities, and swap data repositories by specifying and defining the types of cybersecurity testing essential to fulfilling system safeguards testing obligations. These testing types are vulnerability testing, penetration testing, controls testing, security incident response plan testing, and enterprise technology risk assessment. The final rules also clarify current rule provisions respecting: The categories of risk analysis and oversight that statutorily-required programs of system safeguards-related risk analysis and oversight must address; system safeguards-related books and records obligations; the scope of system safeguards testing; internal reporting and review of testing results; and remediation of vulnerabilities and deficiencies. In addition, the final rules adopt new provisions set forth in the Commission’s Notice of Proposed Rulemaking, applicable to covered designated contract markets (as defined) and all swap data repositories, establishing minimum frequency requirements for conducting certain types of cybersecurity testing, and requiring performance of certain tests by independent contractors.

DATES:

Effective date: This rule is effective September 19, 2016.

Compliance dates: (1) Designated contract markets, swap execution facilities, and swap data repositories must be in full compliance with the vulnerability testing requirements of this rule within 180 calendar days after the effective date. (2) Designated contract markets, swap execution facilities, and swap data repositories must be in full compliance with the penetration testing requirements of this rule within one year after the effective date. Such compliance must include having conducted and completed penetration testing that complies with this rule within one year after the effective date. In the case of covered designated contract markets and swap data repositories, such compliance must include penetration testing conducted and completed by an independent contractor as required by this rule. (3) Designated contract markets, swap execution facilities, and swap data repositories must be in full compliance with the controls testing requirements of this rule within one year after the effective date. Covered designated contract markets and swap data repositories must have testing of key controls by an independent contractor as required by this rule completed within three years after the effective date. (4) Designated contract markets, swap execution facilities, and swap data repositories must be in full compliance with the security incident response plan testing requirements of this rule within 180 calendar days after the effective date. Such compliance must include having created and completed testing of a security incident response plan within 180 days after the effective date. (5) Designated contract markets, swap execution facilities, and swap data repositories must be in full compliance with the enterprise technology risk assessment requirements of this rule within one year after the effective date. Such compliance must include having completed an enterprise technology risk assessment that complies with this rule within one year after the effective date. (6) Designated contract markets, swap execution facilities, and swap data repositories must be in full compliance with the requirements of this rule for updating their business continuity-disaster recovery plans and emergency procedures within one year after the effective date. Such compliance must include having completed an update of such plans and procedures within one year after the effective date. (7) Designated contract markets must be in full compliance with the requirements of this rule respecting required production of annual total trading volume within 30 calendar days of the effective date. (8) Designated contract markets, swap execution facilities, and swap data repositories must be in full compliance with the system safeguards-related books and records requirements of this rule, which are part of such entities’ current books and records requirements under current Commission regulations and statutory core principles, as of the effective date. (9) Designated contract markets, swap execution facilities, and swap data repositories must be in full compliance with all other provisions of these final rules within one year after the effective date.

FOR FURTHER INFORMATION CONTACT: Rachel Berdansky, Deputy Director, Division of Market Oversight, 202–418–5429, *rberdansky@cftc.gov;* David Taylor, Associate Director, Division of Market Oversight, 202–418–5488, *dtaylor@cftc.gov,* or David Steinberg, Associate Director, Division of Market Oversight, 202–418–5102, *dsteinberg@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20851.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Need for Cybersecurity Testing

On December 15, 2015, the Commission issued a Notice of Proposed Rulemaking (“NPRM”) proposing to amend its system safeguards rules for designated contract markets (“DCMs”), swap execution facilities (“SEFs”), and swap data repositories (“SDRs”).[1]

As detailed in the NPRM, cyber threats to the financial sector continue to expand, increasing the need for enhanced cybersecurity testing. Such testing should focus on the entity’s ability to detect, contain, respond to, and recover from cyber attacks. It should also address detection, containment, and recovery from compromise of data integrity—perhaps the greatest threat with respect to financial sector data—in addition to compromise of data availability or confidentiality. As noted in the NPRM, cybersecurity testing is a well-established best practice both generally and for financial sector entities.[2]

Cybersecurity testing is also supported internationally. The recently published *Guidance on cyber resilience for financial market infrastructures* issued by the Committee on Payments and Market Infrastructures and the Board of the International Organization of Securities Commissions (“CPMI–IOSCO Guidance”) provides that:

> Testing is an integral component of any cyber resilience framework. All elements of a cyber resilience framework should be

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[1] System Safeguards Testing Requirements, Proposed Rule, 80 FR 80139, 80140 (Dec. 23, 2015).

[2] *Id.* at 80142.

> rigorously tested to determine their overall effectiveness before being deployed within an FMI, and regularly thereafter. This includes the extent to which the framework is implemented correctly, operating as intended and producing desired outcomes. Understanding the overall effectiveness of the cyber resilience framework in the FMI and its environment is essential in determining the residual cyber risk to the FMI's operations, assets, and ecosystem.[3]

The CPMI–IOSCO Guidance also states that a financial market infrastructure "should establish a comprehensive testing program to validate the effectiveness of its cyber resilience framework on a regular and frequent basis," employing appropriate cyber threat intelligence to inform its testing methods, and using the results to support ongoing improvement of its cyber resilience.[4]

B. Summary of the Proposed System Safeguards Testing Requirements Rule

1. Fundamental Goals

The NPRM identified two principal goals. The first goal was clarification of current cybersecurity testing requirements for all DCMs, SEFs, and SDRs, along with clarification, amplification, and harmonization of other current system safeguards rule provisions. The second goal was the addition of new rule provisions for covered DCMs (as defined) and SDRs, establishing minimum frequency requirements for conducting certain types of cybersecurity testing, and requiring performance of certain tests by independent contractors.

2. Categories of Risk Analysis and Oversight Applicable to All DCMs, SEFs, and SDRs

The system safeguards provisions of the Commodity Exchange Act ("Act" or "CEA") and Commission regulations applicable to all DCMs, SEFs, and SDRs require these entities to maintain a program of risk analysis and oversight to identify and minimize sources of operational risk.[5] Commission regulations concerning system safeguards provide that the program of risk analysis and oversight required of each such entity must address specified categories of risk analysis and oversight to identify and minimize sources of operational risk.[6] The NPRM proposed clarification of what is already required of all DCMs, SEFs, and SDRs regarding the six current categories which their programs of risk analysis and oversight must address, by further defining those categories.[7] It also added and defined another category, enterprise risk management and governance, in order to clarify a requirement already implicit in the statutory mandate to maintain a program of system safeguards risk analysis and oversight. As set out in the NPRM, all seven categories and their definitions are grounded in generally accepted best practices.[8]

3. Requirements To Follow Best Practices, Ensure Testing Independence, and Coordinate BC–DR Plans

The Commission's current regulations for DCMs and SDRs and its guidance for SEFs provide that such entities should follow best practices in addressing the categories which their programs of system safeguards risk analysis and oversight are required to include.[9] They provide that such entities should ensure that their system safeguards testing, whether conducted by contractors or employees, is conducted by independent professionals (*i.e.*, persons not responsible for development or operation of the systems or capabilities being tested).[10] They further provide that such entities should coordinate their business continuity-disaster recovery ("BC–DR") plans with the BC–DR plans of market participants and essential service providers.[11] The NPRM proposed making these provisions mandatory for all DCMs, SEFs, and SDRs, thus aligning the rules for these entities with the Commission's rules for derivatives clearing organizations ("DCOs").[12]

4. Updating of Business Continuity-Disaster Recovery Plans and Emergency Procedures

The NPRM proposed amending the current system safeguards rules requiring all DCMs, SEFs, and SDRs to maintain a business continuity-disaster recovery plan and emergency procedures, by adding a requirement for such plans and procedures to be updated as frequently as required by appropriate risk analysis, but at a minimum at least annually.[13]

5. System Safeguards-Related Books and Records Obligations

The Commission's current system safeguards rules for all DCMs, SEFs, and SDRs contain a provision addressing required production of system safeguards-related documents to the Commission on request.[14] As noted in the NPRM, production of all such books and records is already required by the Act and Commission regulations, notably by Commission regulation § 1.31.[15] The NPRM proposed amending these document production provisions to further clarify requirements for document production by all DCMs, SEFs, and SDRs relating to system safeguards.[16]

6. Cybersecurity Testing Requirements for DCMs, SEFs and SDRs

a. Clarification of Current Testing Requirements for All DCMs, SEFs, and SDRs

The Commission's current system safeguards rules for DCMs, SEFs, and SDRs mandate that each such entity must conduct testing and review sufficient to ensure that its automated systems are reliable, secure, and have adequate scalable capacity.[17] The NPRM proposed clarifying this system safeguards and cybersecurity testing requirement, by specifying and defining five types of system safeguards testing and assessment that a DCM, SEF, or SDR necessarily must perform to fulfill the requirement.[18] These testing and assessment types included vulnerability testing, both external and internal penetration testing, controls testing, security incident response plan testing, and enterprise technology risk assessment. As set out in the NPRM, each of these types of testing is a generally recognized best practice for system safeguards.[19] Providing this clarification of the testing provisions of the current system safeguards rules is a primary purpose of this final rule. The NPRM proposed high-level, minimum requirements for these types of testing, recognizing that the particular ways in which DCMs, SEFs, and SDRs conduct such testing may change as accepted standards and industry best practices develop over time and are reflected in the DCM's, SEF's, or SDR's risk analysis. The NPRM provisions regarding each of the testing types are set out in additional detail in the discussion below concerning comments received.

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[3] Committee on Payments and Market Infrastructures (CPMI) and Board of the International Organization of Securities Commissions (IOSCO), Guidance on cyber resilience for financial market infrastructures (June 2016) section 7.1, at 18, available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD535.pdf*.

[4] *Id.*, section 7.2 at 18.

[5] 7 U.S.C. 5h(f)(14), 7(d)(20), and 24a(c)(8); 17 CFR 37.1400, 38.1050, and 49.24(a)(1).

[6] 17 CFR 38.1051(a) and (b) (for DCMs); 17 CFR 37.1401(a); Appendix A to Part 37, Core Principle 14 of Section 5h of the Act—System Safeguards (a) Guidance (1) Risk analysis and oversight program (for SEFs); 17 CFR 49.24(b) and (c) (for SDRs).

[7] The six current categories include information security; business continuity-disaster recovery ("BC–DR") planning and resources; capacity and performance planning; systems operations; systems development and quality assurance; and physical security and environmental controls.

[8] 80 FR 80139, 80143 (Dec. 23, 2015).

[9] *See* § 38.1051(b) (for DCMs); Appendix A to Part 37, Core Principle 14 of Section 5h of the Act—System Safeguards (a) Guidance (1) Risk analysis and oversight program (for SEFs); § 49.24 (c) (for SDRs).

[10] *See* § 38.1051(h) (for DCMs); Appendix A to Part 37, Core Principle 14 of Section 5h of the Act—System Safeguards (a) Guidance (2) Testing (for SEFs); § 49.24(j) (for SDRs).

[11] See § 38.1051(i) (for DCMs); Appendix A to Part 37, Core Principle 14 of Section 5h of the Act—System Safeguards (a) Guidance (3) Coordination (for SEFs); § 49.24(k) (for SDRs).

[12] 80 FR 80139, 80146 (Dec. 23, 2015).

[13] *Id.* at 80147.

[14] 17 CFR 38.1051(g) and (h) (for DCMs); 17 CFR 37.1401(f) and (g) (for SEFs); 17 CFR 49.24(i) and (j) (for SDRs).

[15] 17 CFR 1.31; *see also* 17 CFR 38.1051(g) and (h); 17 CFR 37.1401(f) and (g); 17 CFR 49.24(i) and (j).

[16] 80 FR 80139, 80147 (Dec. 23, 2015). The NPRM specified that the obligation to produce books and records includes production of: Current copies of BC–DR plans and emergency procedures; assessments of operational risks or system safeguards-related controls; reports concerning system safeguards testing and assessment, whether performed by independent contractors or employees; and all other books and records requested by Commission staff in connection with Commission oversight of system safeguards.

[17] 17 CFR 38.1051(h) (for DCMs); 17 CFR 37.1401(g) (for SEFs); 17 CFR 49.24(j) (for SDRs).

b. New Minimum Testing Frequency and Independent Contractor Testing Requirements for Covered DCMs and All SDRs

The NPRM proposed that covered DCMs (as defined) and all SDRs would be subject to new minimum testing frequency requirements with respect to some of the proposed types of system safeguards testing.[20] To strengthen the objectivity and reliability of the testing, assessment, and information available to the Commission regarding covered DCM and SDR system safeguards, the NPRM also proposed that for certain types of testing, covered DCMs and SDRs would be subject to new independent contractor testing requirements.[21] Establishing such minimum frequency and independent contractor requirements regarding cybersecurity testing by covered DCMs and SDRs is a primary purpose of this final rule. As noted in the NPRM, the proposed minimum frequency requirements and the requirement for some testing to be conducted by independent contractors are grounded in generally accepted standards and best practices.[22] The NPRM provisions regarding the minimum frequency and independent contractor requirements are set out in additional detail below in the discussion of comments received.

7. Additional Testing-Related Risk Analysis and Oversight Program Requirements Applicable to All DCMs, SEFs, and SDRs

The NPRM also clarified the current testing requirements for DCMs, SEFs, and SDRs by specifying and defining three other aspects of risk analysis and oversight programs that are necessary to fulfillment of the testing requirements and achievement of their purposes.[23] These three aspects are: (1) The scope of testing and assessment, (2) internal reporting and review of test results, and (3) remediation of vulnerabilities and deficiencies revealed by testing. As set out in the NPRM, all three of these risk analysis and oversight program aspects are grounded in generally recognized best practices for system safeguards.[24]

a. Scope of Testing and Assessment

The NPRM proposed that the scope of all testing and assessment required by the Commission's system safeguards regulations for DCMs, SEFs, and SDRs should be broad enough to include all testing of automated systems and controls necessary to identify any vulnerability which, if exploited or accidentally triggered, could enable an intruder or unauthorized user or insider to interfere with the entity's operations or with fulfillment of its statutory and regulatory responsibilities; to impair or degrade the reliability, security, or capacity of the entity's automated systems; to add to, delete, modify, exfiltrate, or compromise the integrity of any data related to the entity's regulated activities; or to undertake any other unauthorized action affecting the entity's regulated activities or the hardware or software used in connection with those activities.[25] The NPRM noted that testing scope should be based on proper risk analysis.[26]

b. Internal Reporting and Review

The NPRM called for a DCM's, SEF's, or SDR's senior management and its Board of Directors receive and review reports of the results of all testing and assessment required by Commission rules.[27] It also called for DCMs, SEFs, and SDRs to establish and follow appropriate procedures for remediation of issues identified through such review, and for evaluation of the effectiveness of the organization's testing and assessment protocols.[28] As noted in the NPRM, these requirements are grounded in best practices.[29]

c. Remediation

The NPRM called for each DCM, SEF, and SDR to analyze the results of the testing and assessment required by the applicable system safeguards rules, in order to identify all vulnerabilities and deficiencies in its systems, and to remediate those vulnerabilities and deficiencies to the extent necessary to enable it to fulfill the applicable system safeguards requirements and meet its statutory and regulatory obligations.[30] The NPRM proposed requiring that such remediation be timely in light of appropriate risk analysis with respect to the risks presented.[31] As noted in the

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[18] 80 FR 80139, 80147 (Dec. 23, 2015).

[19] The Commission's current rules and guidance provide that a DCM's, SEF's, or SDR's entire program of risk analysis and oversight, which includes testing, should be based on generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of automated systems. *See* 17 CFR 38.1051(h) (for DCMs); Appendix A to Part 37, Core Principle 14 of Section 5h of the Act—System Safeguards (a) Guidance (1) Risk analysis and oversight program (for SEFs); 17 CFR 49.24(j) (for SDRs). Each of the types of testing addressed in this NPRM—vulnerability testing, penetration testing, controls testing, security incident response plan testing, and enterprise technology risk assessment—has been a generally recognized best practice for system safeguards since before the testing requirements of the Act and the current regulations were adopted. The current system safeguards provisions of the CEA and the Commission's regulations became effective in August 2012. Generally accepted best practices called for each type of testing specified in the proposed rule well before that date, as shown in the following examples. Regarding all five types of testing, *see, e.g.,* NIST SP 800–53A, Rev. 1, Guide for Assessing the Security Controls in Federal Information Systems and Organizations ("NIST 800–53A Rev. 1"), at E1, F67, F230, F148, and F226, June 2010, available at: *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf.* Regarding vulnerability testing, *see, e.g.,* NIST SP 800–53A Rev. 1, at F67, June 2010, available at: *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf;* and NIST SP 800–115, Technical Guide to Information Security Testing and Assessment, at 5–2, September 2008, available at: *http://csrc.nist.gov/publications/nistpubs/800-115/SP800-115.pdf.* Regarding penetration testing, *see, e.g.,* NIST Special Publication ("SP") 800–53A, Rev. 1, at E1, June 2010, available at: *http://csc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf;* and NIST 800–115, at 4–4, September 2008, available at: *http://csrc.nist.gov/publications/nistpubs/800-115/SP800-115.pdf.* Regarding controls testing, *see, e.g.,* NIST 800–53A, Rev. 1, at 13 and Appendix F1, June 2010, available at: *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf.* Regarding security incident response plan testing, *see, e.g.,* NIST 800–53A, Rev. 1, at F148, June 2010, available at *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf.* Regarding enterprise technology risk assessment, *see, e.g.,* NIST 800–53A, Rev.1, at F226, June 2010, available at: *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf.*

[20] 80 FR 80139, 80148 (Dec. 23, 2015).

[21] *Id.*

[22] *Id.*

[23] 80 FR 80139, 80159 (Dec. 23, 2015).

[24] *Id.*

[25] *Id.*

[26] *Id.* at 80160.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

NPRM, such remediation is grounded in best practices.[32]

8. Required Production of Annual Total Trading Volume

The NPRM defined "covered DCM" as a DCM whose annual total trading volume is five percent or more of the annual total trading volume of all DCMs regulated by the Commission.[33] It did so for the purpose of applying the proposed minimum system safeguards testing frequency and independent contractor testing requirements, discussed above, to such covered DCMs. The NPRM noted that this would give DCMs that have less than five percent of the annual total trading volume of all DCMs more flexibility regarding the testing they must conduct, while still requiring all DCMs to conduct testing of all the types addressed in the NPRM.[34] To provide certainty to DCMs as to whether they currently met the definition of a covered DCM, the NPRM called for each DCM to report to the Commission annually its annual total trading volume for the preceding year, and for the Commission to notify each DCM annually of the percentage of the annual total trading volume of all DCMs which is constituted by that DCM's annual total trading volume for the preceding year.[35] The NPRM therefore called for each DCM to report its annual total trading volume for 2015 to the Commission within 30 calendar days of the effective date of the final rule, and to report its annual total volume for 2016 and each subsequent year thereafter to the Commission by January 31 of 2017 and of each calendar year thereafter.[36] The NPRM's definition of covered DCM also addressed cases where a DCM that had been a covered DCM ceased to meet the definitional requirements for covered DCM status, by providing that a covered DCM having annual total trading volume of less than five percent of the combined annual total trading volume of all regulated DCMs for two consecutive calendar years would cease to be a covered DCM as of March 1 of the calendar year following such two consecutive calendar years.[37] This two-year period permitted completion of the proposed two-year cycle for independent contractor-conducted controls testing.

C. Overview of Comments Received

The comment period for the NPRM closed on February 23, 2016. The Commission received nine comment letters addressing the NPRM. Comments were provided by: The Chicago Mercantile Exchange ("CME") Group DCMs, the CME SEF, and the CME SDR (collectively, "CME"); Intercontinental Exchange, Inc. ("ICE") Futures U.S., ICE Swap Trade, and ICE Trade Vault (collectively, "ICE"); the Minneapolis Grain Exchange ("MGEX"); the North American Derivatives Exchange ("Nadex"); the CBOE Futures Exchange ("CFE"); the Depository Trust and Clearing Corporation Data Repository ("DDR"); Tradeweb Markets LLC ("Tradeweb"); the Wholesale Markets Broker's Association, Americas ("WMBAA"), whose members include BGC SEF, GFI SEF, Tradition SEF, and Tullett Prebon SEF; and FireEye, a third-party cybersecurity service provider.[38]

Most commenters expressed broad support for the proposed system safeguards testing rules. ICE stated that it supports the Commission's efforts to improve, clarify, and enhance its rules relating to system safeguards and address cybersecurity testing, calling clarification and enhancement of these rules in response to escalating and evolving cybersecurity threats "timely and welcome," and noting that cybersecurity and system safeguards are paramount to the functioning of the derivatives markets. MGEX said it appreciates and supports the efforts the Commission has put forth to address the growing risk that cyber threats pose to trading markets. Nadex stated that it "commends the Commission's undertaking of this endeavor," that it agrees with the general thrust of the proposed rule, and that it appreciates the Commission's efforts to clarify and enhance the current system safeguards regulations, align requirements with industry standards, and ensure that registrants are meeting compliance thresholds. CFE noted its agreement with the NPRM's approach featuring principles-based testing standards deeply rooted in industry best practices. DDR commended the Commission for its efforts to strengthen system safeguards and cybersecurity testing, and called the proposed rules "constructive steps in addressing key issues." Tradeweb stated that it strongly supports the principles-based testing standards in the NPRM. WMBAA said that it appreciates the Commission's efforts to clarify current system safeguards rule and cybersecurity testing requirements.

Many commenters also offered suggestions and recommendations for clarification or modification of specific NPRM provisions. These comments are addressed as appropriate in connection with the discussion below of the final rule provisions to which they relate. Certain comments requested further clarification relating to definitions provided in the NPRM. Any definitional changes in the final rule are provided for clarification only and do not impose new substantive obligations not included in the NPRM.

D. Advanced Notice of Proposed Rulemaking Regarding Minimum Testing Frequency and Independent Contractor Testing Requirements for Covered SEFs

1. ANPRM Provisions

The NPRM included an Advanced Notice of Proposed Rulemaking ("ANPRM") concerning Commission consideration of whether to propose in a future NPRM that the most systemically important SEFs should be subject to the same minimum testing frequency and independent contractor testing requirements proposed in the NPRM for covered DCMs and SDRs.[39] In announcing its intent to consider such a proposal, the Commission expressed its belief that, because these requirements were essential to the effectiveness of covered DCM cybersecurity testing and the adequacy of their programs of risk analysis and oversight, it is appropriate to consider whether the same requirements should be applied to the most systemically important SEFs. In the ANPRM, the Commission took note that the SEF market is still in the early stages of development. It also suggested that one possible definition of "covered SEF" could be SEFs for which the annual total notional value of all swaps traded on or pursuant to the rules of the SEF is ten percent or more of the annual total notional value of all swaps traded on or pursuant to the rules of all SEFs regulated by the Commission. However, the ANPRM stated that the Commission would also consider whether annual total notional value or annual total number of swaps traded would provide a more appropriate definition, and whether any definition should apply to swaps in each asset class separately or to all swaps combined regardless of asset class. The Commission requested comments regarding each of these considerations, possible costs and benefits and how they could be quantified or estimated, and any other aspects of the ANPRM.

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[32] *Id.*

[33] *Id.* at 80148.

[34] *Id.*

[35] *Id.* at 80160, 80161.

[36] *Id.*

[37] *Id.* at 80148.

[38] All comment letters are available on the Commission Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1650.*

[39] 80 FR 80139, 80148 (Dec. 23, 2015).

2. Comments Received

The Commission received several comments concerning the ANPRM.

Tradeweb called for careful consideration by the Commission, in dialogue with the SEFs to whom any proposal would potentially apply, before issuance of an NPRM on this subject. Tradeweb suggested that, because the SEF market is still in an early stage of development and a covered SEF concept could have a disproportionate impact on the commercial viability of certain SEFs, both the definition of "covered SEF" and the potential costs and benefits involved would require further study and discussion with the industry. To that end, Tradeweb urged the Commission to convene a roundtable or working group of SEFs to discuss the nature and scope of any future SEF-specific system safeguards NPRM before moving forward with such a proposal. Tradeweb advised the Commission to consider the cross-border scope and impact of any future NPRM, and to solicit comment from international regulators either independently or as part of the suggested roundtable or working group.

Several commenters suggested that any future requirements proposed should apply to all SEFs. Tradeweb called for any future proposal to avoid putting certain SEFs at a competitive disadvantage, and to cover all SEFs rather than only systemically important SEFS. WMBAA recommended that the Commission decline to propose a "covered SEF" concept, arguing that: (1) SEF operations do not raise the same systemic concerns attendant on failure of major DCMs or DCOs; (2) products traded on SEFs are fungible across multiple platforms; (3) in the present early stage of the SEF market, individual SEFs could be "covered" one year but not the next, leading to uncertainty; and (4) the present unsettled nature of the SEF regulatory environment would make adoption of a "covered SEF" concept premature. CME called for the Commission to adopt the same risk based system safeguards requirements for all SEFs, leaving testing frequency to be determined by risk analysis, and avoiding an independent contractor testing requirement.

Tradeweb and WMBAA also suggested that the costs associated with imposition of "covered SEF" requirements could well exceed any benefits derived. However, no commenters offered specific information concerning possible costs.

3. Further Commission Consideration

The Commission has considered and evaluated the comments received concerning the ANPRM. The Commission agrees with the comments suggesting that further consideration and consultation with both the industry and other relevant regulators and stakeholders would be appropriate and helpful before issuance of any future NPRM regarding "covered SEFs." The Commission also notes the current lack of specific cost and benefit information regarding this concept, and the current absence of a consensus on how "covered SEF" would be best defined in light of the characteristics of swaps and the swap market. Accordingly, the Commission will engage in appropriate consultation prior to determining whether to issue a future NPRM regarding "covered SEFs."

II. The Final Rules

A. Categories of Risk Analysis and Oversight—§§ 37.1401(a), 38.1051(a), and 49.24(b).

1. Proposed Rule

As noted above, the NPRM proposed clarification of what is already required of all DCMs, SEFs, and SDRs regarding the categories which their programs of risk analysis and oversight must address, by further defining the six categories addressed by the current rules.[40] It also added and defined another category, enterprise risk management and governance, doing so to clarify a requirement already implicit in the statutory mandate to maintain a program of system safeguards risk analysis and oversight.[41] As set out in the NPRM, all seven categories and their definitions are grounded in generally accepted best practices.[42]

2. Comments Received

The Commission received three comments on this topic. Two commenters, CME and DDR, concurred with the NPRM's addition of the category of enterprise risk analysis and governance to the list of categories that programs of risk analysis and oversight must address, and suggested clarifications in this respect. CME stated that it recognizes the importance of effective Board oversight, and asked the Commission to confirm that such oversight may appropriately be delegated to Board level committees. CME also asked the Commission to confirm that the final rule will allow regulated entities flexibility of organizational design concerning how their programs of risk analysis and oversight address the enterprise risk management and governance category, and will not require that an entity's enterprise risk management function conduct all components of this category. DDR agreed with the Commission that active supervision of system safeguards by both senior management and the Board of Directors promotes more efficient, effective, and reliable risk management, and will better position regulated entities to strengthen the integrity, resiliency, and availability of their automated systems. Noting its agreement that regulated entities should give their boards access to the appropriate system safeguards and cyber resiliency information so as to enable effective oversight, DDR suggested that the final rules should acknowledge that there are multiple ways a regulated entity can ensure that its board is appropriately informed. One commenter, MGEX, questioned why this NPRM proposed adding the category of enterprise risk management and governance, while the Commission's parallel Notice of Proposed Rulemaking addressed to DCOs did not, citing this as an inconsistency between the two NPRMs.[43]

MGEX commented that the NPRM proposed a requirement for all DCMs, SEFs, and SDRs to have a program of risk analysis and oversight, without defining such a program. MGEX also stated that the lists of topics specified in the NPRM as included in each category to be addressed in the required program of risk analysis and oversight were overly prescriptive, citing as an example the list of topics the NPRM specified as included in the category of information security. MGEX suggested that the specified categories should be principles-based and should look to evolving best practices.

3. Final Rule

The Commission has considered and evaluated the comments concerning addition of the category of enterprise risk analysis and governance to the list of categories which must be addressed by the program of system safeguards-related risk analysis and oversight which the CEA requires all DCMs, SEFs, and SDRs to establish and maintain. For the reasons set forth below, the Commission is adopting the list of categories as proposed.

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[40] 80 CFR 80139, 80147 (Dec. 23, 2015).

[41] *Id.* at 80143.

[42] *Id.*

[43] *See* 80 FR 80139, 80113 (Dec. 23, 2015).

The Commission continues to believe that addition of the category of enterprise risk analysis and governance is appropriate because this clarifies a requirement already implicit in the statutory mandate to maintain a program of system safeguards risk analysis and oversight.[44] The Commission confirms that the addition of this category does not require that the listed elements of this category be conducted through a particular organizational structure or by particular DCM, SEF, or SDR staff; rather, the final rule provides flexibility in this regard.

The Commission agrees with the comments acknowledging the importance of effective Board of Directors oversight of system safeguards, which the Commission believes is essential to establishing and maintaining the top-down, organization-wide culture of adherence to cybersecurity principles that is required for resilience in today's cybersecurity threat environment. In addition, the Commission agrees with CME's comment that Board of Directors oversight of system safeguards may appropriately be delegated to a Board-level committee or committees, and with DDR's comment that there are a variety of ways in which a DCM, SEF, or SDR can ensure that its Board is sufficiently and appropriately informed to enable it to provide appropriate system safeguards and cybersecurity oversight. In the Commission's view, providing the Board with information sufficient to enable it to provide active, appropriate, knowledgeable, and effective oversight of system safeguards and cybersecurity is the key in this regard.

The Commission has also considered and evaluated MGEX's comment asserting that the NPRM proposed establishment of a requirement for DCMs, SEFs, and SDRs to have a program of system safeguards risk analysis and oversight, without defining such a program, and its comment concerning the lists of topics specified in the NPRM as included in each category to be addressed in the required program of risk analysis and oversight. The requirement for regulatees to have a program of system safeguards risk analysis and oversight was mandated by Congress in the CEA itself, and thus is required by law.[45] The NPRM's references to it did not propose creation of a new requirement in this regard. The Commission's current system safeguards regulations define the program of risk analysis and oversight by specifying the categories of risk analysis and oversight which the program must address. As noted above and in the NPRM, the category of enterprise risk management and governance is implicit and inherent in the statutory requirement itself, and supported by generally accepted standards and best practices.[46]

The Commission agrees with MGEX that the required categories of risk analysis and oversight should be principles-based, but disagrees that the NPRM lists of topics included in each category consist of static lists of controls. As set out in detail in the NPRM, each of the aspects cited in the NPRM for the various categories that the required program of risk analysis and oversight must address is rooted in generally accepted standards and best practices.[47] Because the Commission's current system safeguards rules and guidance provide that DCMs, SEFs, and SDRs should follow generally accepted best practices and standards regarding system safeguards, these entities' programs of risk analysis and oversight should already be addressing each of the aspects included in the NPRM for each risk analysis and oversight category. As the NPRM explicitly states, the aspects specified in the NPRM for each category do not provide all-inclusive or static lists; rather, they highlight important aspects of the categories that are already recognized as best practices.[48] An important benefit of the adherence-to-best-practices approach taken in the Commission's current system safeguards rules, the NPRM generally, and the NPRM provisions addressing the categories in particular, is precisely that such best practices can evolve over time as the cybersecurity field evolves. In addition, the Commission continues to believe, as it stated in the NPRM, that risk analysis and oversight programs that address each of the aspects listed in the NPRM for the risk analysis and oversight categories are essential to maintaining effective system safeguards in today's cybersecurity threat environment.[49]

B. Requirement To Follow Generally Accepted Standards and Best Practices—§§ 37.1401(b), 38.1051(b), and 49.24(c)

1. Proposed Rule

The NPRM retained the substance of the Commission's current system safeguards rule provision calling for DCMs, SEFs, and SDRs to adhere to generally accepted standards and best practices in their required programs of system safeguards risk analysis and oversight. The only change proposed in the NPRM was language adjustment to clarify that such adherence is mandatory for all DCMs, SEFs, and SDRs.[50]

2. Comments Received

Several commenters, including CME, Nadex, DDR, Tradeweb, and WMBAA, agreed with the Commission that an entity's program of risk analysis and oversight should follow generally accepted standards and best practices. CME requested that the Commission confirm that generally accepted best practices not explicitly cited in the NPRM may also be used in this regard. CME also asked the Commission to confirm that the intent of this provision is that a regulated entity should take generally accepted best practices into account as it designs a program of risk analysis and oversight tailored to its risks and its appropriate analysis of those risks, rather than to codify particular best practices.

3. Final Rule

The Commission has considered and evaluated the comments concerning the requirement that a DCM's, SEF's, or SDR's required program of risk analysis and oversight should follow generally accepted standards and best practices. For the reasons set forth below, the Commission is adopting this provision as proposed.

As CME asked the Commission to confirm, the best practices cited in the NPRM do not constitute an exclusive or codified list.[51] DCMs, SEFs, and SDRs should take generally accepted best practices and standards into account as they conduct appropriate and current analysis of individual risks and conducts appropriate and effective oversight with respect to such risks. A program of risk analysis and oversight should consider all generally accepted sources of best practices in addressing the particular risks and circumstances of the entity in question in an effective and appropriate way. In the Commission's view, the requirement to follow generally accepted standards and best practices is one of the most important requirements of the Commission's system safeguards rules. Best practices evolve over time in conjunction with the changing cybersecurity threat environment. The agility that a best practices approach therefore provides is crucial to effective resilience with respect to cybersecurity and system safeguards. In addition, ongoing development of best practices benefits from private sector expertise and input, as well as from public sector contributions. Such private sector expertise and input is important to effective cybersecurity. The Commission also observes that requiring financial sector entities to follow best practices with respect to system safeguards and cybersecurity is an effective key to harmonizing the oversight of cybersecurity conducted by different financial regulators. Some financial regulators, such as the FFIEC agencies, are themselves sources of generally accepted best practices. Regulatory oversight of cybersecurity generally follows best practices, most sources of which are largely consonant with each other.

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[44] 80 FR 80139, 80143 (Dec. 23, 2015).

[45] CEA section 5(d)(20)(A), 17 U.S.C. 7(d)(20).

[46] 80 FR 80139, 80143 (Dec. 23, 2015).

[47] *Id.*

[48] *Id.*

[49] *Id.* at 80145.

[50] *Id.* at 80146.

[51] *Id.*

C. Business Continuity-Disaster Recovery Plan—§§ 37.1401(c), 38.1051(c), and 49.24(d)

1. Proposed Rule

The Commission's current rules concerning the business continuity-disaster recovery ("BC–DR") plans of DCMs, SEFs, and SDRs require that these entities maintain BC–DR plans and resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of their operations and fulfillment of their responsibilities and obligations as registrants, and specify recovery time. The NPRM proposed further alignment of these provisions with generally accepted standards and best practices by adding a requirement for DCMs, SEFs, and SDRs to update their BC–DR plans and emergency procedures at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually.[52]

2. Comments Received

CME stated that it agreed with the Commission's proposal to require updating of BC–DR plans and emergency procedures at least annually and more frequently if necessitated by other circumstances.

3. Final Rule

The Commission has considered and evaluated the comment concerning the frequency of updates to BC–DR plans and emergency procedures, with which it agrees. As noted above, updating such plans at a frequency determined by risk analysis but no less frequently than annually is supported by generally accepted standards and best practices. The Commission is adopting this provision as proposed.

D. Books and Records Requirements—§§ 37.1401(g), 38.1051(g), and 49.24(i)

1. Proposed Rule

As noted above, the Commission's current system safeguards rules for all DCMs, SEFs, and SDRs contain a provision addressing required production of system safeguards-related documents to the Commission on request.[53] The NPRM proposed amending these document production provisions to further clarify requirements for system safeguards-related document production.[54] Specifically, the NPRM proposed requiring each DCM, SEF, or SDR to provide to the Commission, promptly on the request of Commission staff: Current copies of its BC–DR plans and emergency procedures; all assessments of its operational risks or system safeguards-related controls; all reports concerning system safeguards testing and assessment; and all other books and records requested in connection with Commission oversight of system safeguards.[55]

2. Comments Received

Two commenters, CME and WMBAA, recognized the Commission's established authority to require production of records, but asked the Commission to continue to work with DCMs, SEFs, and SDRs to find ways that highly sensitive system safeguards-related materials can be made available to Commission staff in ways that maximize protection of their confidentiality. WMBAA suggested that this could be accomplished in appropriate cases by having CFTC staff review highly sensitive information at a registrant's location or in a non-electronic, non-reproducible format.

ICE, suggested that, with respect to parent firms that own both CFTC-regulated and non-CFTC-regulated entities, the Commission should avoid requiring production of documents discussing risks at the firm-wide level, and limit its production requests to documents focused solely on the risks of CFTC-regulated entities. In contrast, WMBAA noted that a registrant's systems, such as SEF systems, are often a subset of a larger financial services company's systems, and share cybersecurity defenses, procedures, and testing with the parent entity as a whole, rather than standing alone with respect to cybersecurity. WMBAA suggested that it would be contrary to best practices for CFTC oversight to focus solely on the risks and cybersecurity protections of the CFTC-regulated entity's systems, without considering the related systems and protections of the parent entity.

3. Final Rule

The Commission has considered and evaluated the comments concerning the books and records provisions of the NPRM. For the reasons set forth below, the Commission is adopting these provisions as proposed.

The established requirements of the Commission's regulations regarding production of books and records are essential to the Commission's ability to fulfill its oversight responsibilities. The Commission also recognizes that the cybersecurity and system safeguards information of DCMs, SEFs, and SDRs can be sensitive. As noted by commenters, Commission staff conducting cybersecurity oversight work regularly with regulated entities to find ways for sensitive cybersecurity information to be made available to the Commission while minimizing the risk of inappropriate disclosure.

The Commission has also considered and evaluated the comments concerning production of books and records that address the system safeguards risks and cybersecurity protections of parent companies. The Commission agrees with WMBAA's observation that the automated systems, programs of system safeguards-related risk analysis and oversight, cybersecurity defenses and testing, and BC–DR plans and resources of CFTC-regulated DCMs, SEFs, and SDRs owned by parent financial sector companies that also own entities not regulated by the Commission are frequently shared across the parent company. Indeed, this is presently the case with respect to the parent companies of all DCMs, SEFs, and SDRs regulated by the Commission which are subsidiaries of a parent company. The Commission disagrees with ICE's suggestion that production of books and records addressing parent-wide system safeguards risks and risk analysis and oversight programs should not be required. Production of all of the books and records specified in the NPRM books and records provision is already required by the Act and Commission regulations, notably by Commission regulation § 1.31.[56] Because DCMs, SEFs, and SDRs often share system safeguards and cybersecurity risks, system safeguards risk analysis and oversight programs, automated systems, business continuity-disaster recovery plans, and other system safeguards and cybersecurity resources with their parent companies, the suggested limitation would in many cases—including the case of ICE itself—cripple the oversight of system safeguards risks and risk analysis and oversight programs for which the CEA makes the Commission responsible, and thus would harm the public interest. The Commission will continue to exercise its authority to require production of all books and records relating to the system safeguards of DCMs, SEFs, and SDRs, including those relating to the system safeguards risks and risk analysis and oversight programs of parent companies where such risks or such programs are shared in whole or in part by a DCM, SEF, or SDR.

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[52] *Id.* at 80147.

[53] 17 CFR 38.1051(g) and (h) (for DCMs); 17 CFR 37.1401(f) and (g) (for SEFs); 17 CFR 49.24(i) and (j) (for SDRs).

[54] 80 FR 80139, 80147 (Dec. 23, 2015).

[55] *Id.*

[56] 80 FR 80139, 80147 (Dec. 23, 2015).

E. System Safeguards Testing—§§ 37.1401(h), 38.1051(h), and 49.24(j)

The provisions of the NPRM addressing automated system testing by DCMs, SEFs, and SDRs retained the language of the Commission's current rules requiring these entities to conduct regular, periodic, objective testing and review of their automated systems to ensure their reliability, security, and adequate scalable capacity.[57] They also retained the language of the current rules requiring regular, periodic testing and review of the business continuity-disaster recovery capabilities of such entities. The NPRM proposed further clarification of the current rules by specifying that such testing and review must include vulnerability testing, penetration testing, controls testing, security incident response plan testing, and enterprise technology risk assessment, and defining certain terms related to such testing.[58]

1. Definitions—§§ 37.1401(h)(1), 38.1051(h)(1), and 49.24(j)(1)

a. Proposed Rule

For the purposes of the testing sections of the Commission's system safeguards rules, the NPRM defined the following terms relating to system safeguards testing and assessment by DCMs, SEFs, and SDRs: Controls; controls testing; enterprise technology risk assessment; external penetration testing; internal penetration testing; key controls; security incident; security incident response plan; security incident response plan testing; and vulnerability testing. With respect to testing by DCMs, the NPRM also defined the following term: Covered designated contract market.[59]

b. Comments Received

Five commenters, CME, ICE, MGEX, DDR, and WMBAA, provided comments concerning some of the definitions proposed in the NPRM.

(1) External and internal penetration testing.

ICE recommended that the definitions of external and internal penetration testing specify that such testing should include scenario or capture-the-flag testing intended to compromise the system holistically via all available means including technical exploit, social engineering, and lateral traversal. ICE also suggested that the Commission clarify that penetration testing is not intended to include application-specific tests, and recommended that the final rule should avoid specifying parameters for internal penetration testing, in order to allow each regulated entity to determine its own testing methodology. Tradeweb suggested that external penetration testing should be defined to mean penetration testing conducted over the internet. WMBAA suggested that the final rule should not focus on testing from a SEF system's perimeter, but should focus on all the systems supporting the SEF's functionality, whether those of the SEF itself or of its parent company.

(2) Controls and Key Controls

As part of its recommendation that the final rule eliminate all requirements for controls testing (addressed in the discussion of controls testing below), ICE recommended that the final rule should remove the proposed definitions of controls and key controls.

(3) Covered Designated Contract Market

MGEX commented that the definitional distinction between covered and non-covered DCMs is a valuable concept that recognizes the lower systemic risk posed by smaller entities.[60] However, CME commented that the distinction is unnecessarily complex and imposes undue burdens, and suggested that the final rule adopt a uniform set of standards for all DCMs. CME also suggested that if the covered DCM concept were to be retained, the Commission should consider alternatives to annual DCM reporting of total annual trading volume, because the Commission currently receives volume reports pursuant to DCM Core Principle 8 and part 16 of the Commission's regulations.

(4) Security Incident

The NPRM defined "security incident" as a cyber security or physical security event that actually or potentially jeopardizes automated system operation, reliability, security, or capacity, or the availability, confidentiality, or integrity of data. No comments were received concerning the NPRM definition. However, the Commission received a comment from the Options Clearing Corporation ("OCC") concerning the identical definition included in the parallel Notice of Proposed Rulemaking issued by the Commission on December 15, 2015, proposing to amend its system safeguards rules for DCOs.[61] OCC argued that including in the definition events that "potentially" jeopardize automated systems or data renders the definition vague, and could be interpreted to include most, if not all, cybersecurity events experienced by a DCO. OCC suggested amending the definition to replace "potentially jeopardizes" with "has a significant likelihood of jeopardizing."

Some comments also addressed terms that were used but not defined in the NPRM. Although the NPRM did not define the terms "recovery" or "resumption," DDR commented that, in its view, the NPRM distinguished between resumption of critical functions following a cyber incident on the one hand, and recovery in the sense of restoration of capabilities or services impaired due to a cyber event. Noting that this distinction is consistent with the definitions of these terms in the CMPI–IOSCO Guidance on Cyber Resilience for Financial Market Infrastructures—Consultative Report of November 24, 2015,[62] DDR stated that in this respect the NPRM appropriately recognized differences among financial market infrastructures with respect to varying requirements for recovery and resumption timeframes.

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[57] *Id.* at 80147, 80148.

[58] *Id.*

[59] *Id.* at 80148.

[60] MGEX commented that the Commission should use a similar definition to distinguish between larger and smaller derivatives clearing organizations ("DCOs"). MGEX also made these comments in its comment letter concerning the Commission's NPRM regarding system safeguards testing by DCOs, available at: *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60651&SearchText=*. Since testing by DCOs is not addressed by this final rule, but will be addressed in the final rule regarding DCO system safeguards testing, these comments are most appropriately addressed in the DCO system safeguards testing final rule, and are addressed there.

[61] 80 FR 80113 (Dec. 23, 2015). The OCC comment letter is available at *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60650&SearchText=*.

[62] CPMI–IOSCO, Guidance on Cyber Resilience for Financial Market Infrastructures—Consultative Report (Nov. 2015), at 26, available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD513.pdf*.

CME, ICE, and MGEX commented concerning the NPRM's use of the terms "independent contractor" and "independent professional." CME asserted that neither term is clearly defined in either the Commission's current rules or the NPRM. ICE called on the Commission to clarify in the final rule that entity employee groups such as the internal audit function are considered to be independent professionals not responsible for the development of operation of the systems or capabilities tested or assessed in the area of system safeguards. While not commenting directly on these definitions, MGEX expressed the view that having independent testing performed is a key and costly feature proposed in the NPRM.

c. Final Rule

The Commission has considered and evaluated the comments concerning the definitions proposed in the NPRM. For the reasons discussed below, the final rule will amend the definition of security incident, and otherwise retain the definitions as proposed.

(1) External and Internal Penetration Testing

The Commission agrees with ICE's suggestion that penetration testing that attempts to compromise an entity's systems holistically through means including technical exploit, social engineering, and lateral traversal is appropriate to today's cybersecurity threat environment. The Commission also agrees with ICE's recommendation that the final rule should avoid specifying particular internal penetration testing parameters in order to give DCMs, SEFs, and SDRs flexibility in determining their particular methodology for such testing, and believes that approach is also appropriate regarding external penetration testing. Best practices indicate that with respect to penetration testing, entities should regularly "update the list of attack techniques and exploitable vulnerabilities used in penetration testing based on an organizational assessment of risk or when significant new vulnerabilities or threats are identified and reported." [63] Where penetration testing that attempts to compromise systems holistically through means including technical exploit, social engineering, and lateral traversal is called for by appropriate risk analysis, as it may be in most or even all cases, the final rule will require penetration testing using such means, by virtue of its requirement for all DCMs, SEFs, and SDRs to follow best practices, and its requirement for all DCMs, SEFs, and SDRs to make the scope of their cybersecurity testing broad enough to include all testing that their programs of risk analysis and current cybersecurity threat analysis indicate is necessary. The Commission notes that essential penetration testing methods and techniques may change over time, based on an entity's appropriate risk analysis, technological changes, and the evolving nature of cybersecurity threats. The Commission disagrees with Tradeweb's suggestion that external penetration testing should be defined as testing conducted over the Internet. Best practices indicate that external penetration testing should be conducted from multiple vectors including remote access, virtual private network connections, and any separate environments or local area network segments, as well as the internet.[64] In addition, such testing should include not only Iinternet based or network-layer based tests but also application-layer assessments. The Commission agrees with WMBAA's comment that penetration testing must include testing of all systems supporting a regulated entity's functionality or involved in the entity's system safeguards, whether the systems belong to the entity itself or to the entity's parent company.

(2) Covered Designated Contract Market

The Commission has considered and evaluated the comments for and against the NPRM's definitional distinction between covered and non-covered DCMs. The Commission continues to believe that the NPRM's proposed requirements regarding the minimum frequencies at which various types of cybersecurity testing should be conducted and regarding the use of independent contractors to perform specified tests are important and appropriate in today's cybersecurity threat environment. As noted in the NPRM, these requirements aim to strengthen the objectivity and reliability of the testing and assessment information available to the Commission regarding system safeguards, and to ensure the effectiveness and timeliness of both cybersecurity testing and programs of risk analysis and oversight.[65] Additionally, the use of independent contractors for many types of testing is consonant with best practices. The Commission also continues to believe that application of these requirements to DCMs whose annual total trading volume is five percent or more of the annual total trading volume of all DCMs regulated by the Commission is appropriate. This approach reduces possible costs and burdens for smaller and less systemically critical DCMs, by giving them additional flexibility regarding their cybersecurity testing. The fact that smaller DCMs will still be required to conduct testing of all the types addressed in the final rule means that this approach will not impair the fundamental goals of the CEA and the Commission's system safeguards regulations. The NPRM also proposed offering such added flexibility to SEFs, which like non-covered DCMs are required to conduct all of the specified types of testing but not made subject to the minimum frequency and independent contractor requirements. The Commission continues to believe this to be appropriate as well, for the same reasons.[66]

The Commission declines CME's suggestion that it rely on DCM volume reports submitted pursuant to part 16 of the Commission's regulations. The Commission notes that while it receives daily trade information from DCMs pursuant to part 16, it does not receive total annual trading volume information from DCMs.[67] The Commission believes that DCM submission of annual trading volume requirement is essential for the Commission to accurately evaluate whether a particular DCM must comply with the frequency and independent contractor requirements as a covered DCM. The Commission believes that annual total trading volume information is readily available to DCMs, and that DCMs generally calculate their annual trading volume in the usual course of business. The Commission does not believe that looking up the amount of a DCM's annual total trading volume and reporting that amount to the Commission once a year, something that can be done by email in thirty minutes or less, can reasonably be said to impose an undue burden on a DCM.

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[63] NIST SP 800–53A, Rev. 4, Assessing Security and Privacy Controls in Federal Information Systems and Organizations—Building Effective Assessment Plans, at E–1, *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53Ar4.pdf.*

[64] *See, e.g.,* Security Standards Council, Payment Card Industry Data Security Standards, Apr. 2016, v. 3.2 ("PCI DSS"), available at *https://www.pcisecuritystandards.org/documents/PCI_DSS_v3-2.pdf,* Information Supplement: Penetration Testing Guidance, at 5–8, available at *https://www.pcisecuritystandards.org/documents/Penetration_Testing_Guidance_March_2015.pdf;* and Center for Internet Security, Critical Security Controls, at 68–69, available at *https://www.cisecurity.org/critical-controls/.*

[65] 80 FR 80139, 80148 (Dec. 23, 2015).

[66] *Id.*

[67] Core Principle 8 is inapplicable here, because it requires DCMs to publish daily volume information but does not require submission of that information to the Commission.

(3) Security Incident

The Commission has considered and evaluated OCC's comment concerning the definition of "security incident" included in the Commission's parallel NPRM proposing amendment of its system safeguards rules for DCOs. The Commission is amending the definition as the comment suggested, defining security incident as a cyber security or physical security event that "actually jeopardizes or has a significant likelihood of jeopardizing" automated systems or data. The definition included in the DCO NPRM is identical to the one included in the NPRM regarding DCMs, SEFs, and SDRs. The Commission issued the two NPRMs simultaneously and in parallel, and intended that the final rules issued in connection with both NPRMs should be closely aligned. Accordingly, the Commission believes the comment received is germane to both final rules. The Commission also notes that the amendment of this definition does not expand the definition's reach but rather narrows it somewhat, and therefore lightens any costs or burdens involved to at least some degree.

(4) Recovery and Resumption

With respect to DDR's comment regarding the terms "recovery" and "resumption," the Commission notes that the NPRM did not, and the final rule will not, define these terms or make any change to the language or the requirements of the Commission's current system safeguards rules for DCMs, SEFs, or SDRs regarding recovery and resumption of operations and fulfillment of responsibilities and obligations as a registered entity.

(5) Independent Contractor and Independent Professional

The Commission has considered and evaluated the various comments concerning the terms "independent contractor" and "independent professional" used in the NPRM.[68] The Commission notes that both terms are effectively defined in the Commission's current system safeguards rules for DCMs and SDRs and its current system safeguards rules and guidance for SEFs.[69] These current provisions call for the system safeguards testing required of all DCMs, SEFs, and SDRs to be conducted by qualified, independent professionals, who may be independent contractors or employees of the DCM, SEF, or SDR, but should not be persons responsible for development or operation of the systems or capabilities being tested.[70]

Accordingly, for purposes of the current system safeguards rules, independent contractors are qualified system safeguards professionals who are not employees of the DCM, SEF, or SDR. The current rules use the terms independent contractor and employee as they are legally defined and generally used.[71] The Commission believes that the distinction between independent contractor and employee is well settled and understood, and does not need additional definition in the system safeguards rules.

With respect to system safeguards testing, the current rules provide that employees conducting required testing must be independent in that they are not employees responsible for development or operation of the systems or capabilities being tested. The Commission believes that this distinction between employees with sufficient independence to appropriately conduct required system safeguards testing and those who lack such independence is also sufficiently clear, and does not require additional definition. The NPRM used, and the final rule will retain, this language from the current system safeguards rules. Where this requirement is included, the testing in question must be conducted by employees who are independent, which means employees not responsible for developing or operating what is being tested.[72] Employees who are part of the internal audit function of a DCM, SEF, or SDR, are one example of employees having appropriate independence. Other employees who possess the specified degree of independence and have qualifications the DCM, SEF, or SDR believes are appropriate may also be suitable in such cases.

One clarification may be helpful with respect to testing required to be performed by independent contractors, as distinct from testing performed by persons performing the internal audit function. As noted above, the internal audit function is a required aspect of the enterprise risk management and governance category which must be included in the program of risk analysis and oversight that a DCM, SEF, or SDR must maintain. It is an integral part of, and a responsibility of, the regulated entity, whether carried out in-house or outsourced. The NPRM proposed required testing by independent contractors in part to give the Commission's system safeguards oversight a third source of system safeguards information on which to rely, in addition to the entity's employees and its internal audit function.[73] It also proposed independent contractor testing to give the regulated entity the benefit of a truly outside perspective concerning system safeguards, not colored by beginning from the institutional point of view, something that best practices say is important as noted earlier. Accordingly, testing performed by persons executing the internal audit function will not fulfill the requirement for testing by independent contractors, whether it is performed by employees executing the internal audit function or by internal audit contractors to whom a DCM, SEF, or SDR outsources part or all of its internal audit function.

2. Vulnerability Testing—§§ 37.1401(h)(2), 38.1051(h)(2), and 49.24(j)(2)

a. Proposed Rule

The NPRM called for all DCMs, SEFs, and SDRs to conduct vulnerability testing of a scope sufficient to satisfy the requirements in the proposed rule.[74] It proposed requiring all such entities to conduct vulnerability testing at a frequency determined by an appropriate risk analysis, with a minimum frequency requirement of quarterly vulnerability testing for covered DCMs and SDRs.[75] The NPRM called for vulnerability testing to include automated vulnerability scanning, conducted on an authenticated basis where indicated by appropriate risk analysis, with compensating controls where scanning is conducted on an unauthenticated basis. The NPRM called for covered DCMs and SDRs to engage independent contractors to conduct two of the minimum quarterly vulnerability tests required of them each year.[76] It provided that all other vulnerability testing by covered DCMs and SDRs, and all vulnerability testing by non-covered DCMs and SEFs, should be conducted either by independent contractors or by employees not responsible for development or operation of the systems or capabilities being tested.[77]

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[68] 80 FR 80139, 80146 through 80161 (Dec. 23, 2015).

[69] 17 CFR §§ 38.1051(h) (for DCMs); 37.1401 (g) and Appendix B to Part 37, Core Principle 14 of Section 5h of the Act—System Safeguards (C)(a)(2) (for SEFs); 49.24(j) (for SDRs).

[70] *Id.*

[71] *See, e.g.*, Black's Law Dictionary, Tenth Ed. (Thomson Reuters, St. Paul, MN, 2014) ("Employee. Someone who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.") ("Independent Contractor. Someone who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it.")

[72] This requirement is included in the final rule provisions concerning most types of testing, but as discussed below is not included in the SIRP testing provision.

[73] 80 FR 80139, 80148 (Dec. 23, 2015).

[74] 80 FR 80139, 80148 through 80151 (Dec. 23, 2015).

[75] *Id.* at 80149, 80150.

b. Comments Received

(1) Requirement for Vulnerability Testing

Several commenters, including CME, ICE, and Nadex, agreed that the NPRM's call for vulnerability testing was appropriate, because such testing is critical to identification and remediation of cybersecurity vulnerabilities. CME stated that vulnerability testing, of a scope aligned with risk analysis, should be embedded in an organization's systems development life cycle, in order to promote a culture of awareness as early and close to the first line of defense as possible.

(2) Vulnerability Testing Frequency

Commenters, including CME and ICE, supported the minimum quarterly vulnerability testing frequency requirement for covered DCMs and SDRs. CME noted that at least quarterly testing is likely to be an appropriate frequency for most organizations where critical assets are concerned. Regarding the requirement to test as often as indicated by appropriate risk analysis, CME agreed that vulnerability testing frequency should be aligned with appropriate risk analysis. MGEX called for the final rule to leave the frequency of vulnerability testing to be determined by regulatees. ICE argued that regulatees should not be subject to a formal risk assessment to potentially determine a higher vulnerability testing frequency. Nadex asked the Commission to confirm that the level of detail in the risk assessment used to determine appropriate vulnerability testing frequency is that called for by generally accepted standards and best practices.

(3) Automated Scanning and Authenticated Scanning

Commenters raised no issue with the NPRM requirement for vulnerability testing to include automated vulnerability scanning. ICE called for removal of the requirement for automated scanning to include authenticated scanning, arguing that this requirement would increase the cost and time of a scan, increase risk through creation of an operating system login on a new system, and have limited utility in the context of financial system infrastructure.

(4) Vulnerability Testing by Independent Contractors

A number of commenters argued that the use of independent contractors for vulnerability testing could undesirably increase risks. CME suggested that outsider access to systems can broaden both operations risk and the risk of disclosure of sensitive information, and noted that there is a limited supply of independent contractors with appropriate qualifications for vulnerability testing. ICE commented that vulnerability scanners can be hazardous to systems, can cause issues during deployment, and require a high level of care to avoid live system jeopardy, including both intimate network knowledge and change control interaction. In short, ICE stated, third-party vulnerability scanning would be costly and potentially dangerous without adding value. DDR stated that vulnerability testing by independent contractors would introduce unnecessary risk to critical infrastructure and heighten the risk of systems outages. These commenters therefore requested that the final rule eliminate the independent contractor requirement for vulnerability testing, and permit such testing to be conducted by entity employees not responsible for development or operation of the systems or capabilities tested. CME suggested that allowing such employees to conduct vulnerability testing has been proven effective, allows testing by those with the greatest knowledge and experience concerning the systems tested, and has the benefit of promoting an organizational culture of cybersecurity awareness. DDR recommended that SDR employees conduct vulnerability testing, and that independent contractors review testing procedures to confirm that they are effective and consonant with industry standards.

c. Final Rule

The Commission has considered and evaluated the comments concerning vulnerability testing. For the reasons set out below, the final rule will call for vulnerability testing and include the proposed vulnerability testing frequency requirements, but will not require that automated vulnerability scanning include authenticated scanning, and will not require the use of independent contractors as proposed.

(1) Requirement for Vulnerability Testing

The Commission agrees with commenters that vulnerability testing is critical to identification and remediation of cybersecurity vulnerabilities. It is an essential component of an effective program of risk analysis and oversight, and an essential means of fulfilling the testing requirements of the Commission's current system safeguards rules.

(2) Vulnerability Testing Frequency

The Commission agrees with the comments supporting the minimum quarterly vulnerability testing requirement for covered DCMs and SDRs, and agrees that, in today's cybersecurity environment, most organizations should conduct such testing at least quarterly. The Commission also agrees that, beyond the minimum frequency proposed for covered DCMs and SDRs, all DCMs, SEFs, and SDRs should conduct vulnerability testing as frequently as indicated by appropriate risk analysis. The Commission disagrees with the suggestion that the frequency of vulnerability testing should simply be left to these entities themselves. It is essential for such testing to be conducted as frequently as indicated by analysis of a particular entity's risks, which is likely in most cases to call for testing at least quarterly. The risk analysis referred to in the NPRM in this connection is the appropriate risk analysis which each DCM, SEF, and SDR must conduct and maintain as an integral part of the program of risk analysis and oversight that the CEA requires. ICE apparently misunderstood the NPRM as calling for a separate, formal risk analysis made for the specific purpose of determining vulnerability testing frequency. That is not required; what is required is vulnerability testing as often as indicated by the ongoing, appropriate risk analysis inherent in a regulatee's required program of risk analysis and oversight. As provided in the current system safeguards rules and in the NPRM, the program of risk analysis required of a DCM, SEF, or SDR, and the risk analyses inherent in that program, are indeed to be conducted in light of generally accepted standards and best practices.[78]

(3) Automated Scanning and Authenticated Scanning

No commenters disagreed with the proposed requirement for vulnerability testing to include automated vulnerability scanning. In light of ICE's suggestion that the proposed requirement for automated scanning to include authenticated scanning could increase costs, burdens, and risks while having limited utility for DCMs, SEFs, and SDRs, the Commission has decided to remove the authenticated scanning requirement from the final rule. Instead, the final rule provides that automated vulnerability scanning must follow best practices. The Commission notes that, to the extent that best practices require or come to require authenticated scanning, such scanning would be mandatory pursuant to the requirement to follow best practices, and would be addressed in system safeguards examinations.

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[76] *Id.* at 80150.

[77] *Id.* at 80150, 80151.

[78] 80 FR 80139, 80149, 80150 (Dec. 23, 2015).

(4) Vulnerability Testing by Independent Contractors

The Commission has carefully considered the multiple comments suggesting that use of independent contractors for vulnerability testing could undesirably increase risks, raise hazards for automated systems, and increase costs and dangers without adding value. The Commission has also noted the comment that vulnerability testing conducted by employees not responsible for development or operation of the systems or capabilities tested has been proven effective, provides expertise valuable in vulnerability testing, and promotes an organizational culture of cybersecurity awareness. For these reasons, and in order to reduce costs and burdens to the extent practicable while still achieving the purposes of the CEA and of the NPRM, the final rule does not include the proposed requirement for covered DCMs and SDRs to have some vulnerability testing conducted by independent contractors. Instead, the final rule permits all DCMs, SEFs, and SDRs to conduct all required vulnerability testing by using either independent contractors or entity employees not responsible for development or operation of the systems or capabilities being tested. The Commission acknowledges the value of DDR's recommendation that independent contractors evaluate the effectiveness of the regulatee's vulnerability testing procedures and their consistency with best practices. While the final rule's vulnerability testing provisions will not incorporate such a requirement, the Commission observes that such independent validation of vulnerability testing procedures should likely be included as part of a regulatee's controls testing program.

3. External Penetration Testing—§§ 37.1401(h)(3), 38.1051(h)(3), and 49.24(j)(3)

a. Proposed Rule

The NPRM called for all DCMs, SEFs, and SDRs to conduct external penetration testing of a scope sufficient to satisfy the requirements in the proposed rule.[79] It proposed requiring all such entities to conduct external penetration testing at frequency determined by an appropriate risk analysis, with a minimum frequency requirement of annual external penetration testing for covered DCMs and SDRs.[80] The NPRM called for covered DCMs and SDRs to engage independent contractors to conduct the annual external penetration test required of them.[81] It provided that all other external penetration testing by covered DCMs and SDRs, and all external penetration testing by non-covered DCMs and SEFs, should be conducted either by independent contractors or by employees not responsible for development or operation of the systems or capabilities being tested.[82]

b. Comments Received

(1) Requirement for External Penetration Testing

Commenters raised no issue with the NPRM's call for external penetration testing. CME noted that penetration testing is a significant component of the program to identify and minimize sources of operational risk required of all DCMs, SEFs, and SDRs. CME also approved the flexibility concerning penetration test design provided in the NPRM. Nadex noted its agreement with the NPRM's penetration testing requirement.

(2) External Penetration Testing Frequency

Commenters also raised no issue with the requirement for all DCMs, SEFs, and SDRs to conduct external penetration testing at a frequency determined by appropriate risk analysis. CME noted that many risk based factors should inform the frequency of such testing. Several commenters also supported the annual minimum frequency requirement for external penetration testing by covered DCMs and SDRs. CME stated that annual external penetration testing generally will be appropriate, ICE stated that it agrees with the annual requirement, and Nadex agreed with the NPRM's penetration testing requirements. MGEX called for the final rule to leave the frequency of external penetration testing to be determined by regulatees. ICE argued that regulatees should not be subject to a formal risk assessment to potentially determine a higher penetration testing frequency.

(3) External Penetration Testing by Independent Contractors

Most commenters raised no issue with the requirement for covered DCMs and SDRs to have the required annual external penetration test conducted by independent contractors. DDR commented generally that an SDR should have flexibility regarding whether to have testing conducted by independent contractors or employees not responsible for development or operation of the systems or capabilities tested, based on the risks of that SDR.

c. Final Rule

The Commission has considered and evaluated the comments concerning external penetration testing. For the reasons discussed below, the final rule will include the NPRM provisions regarding such testing as proposed.

(1) Requirement for External Penetration Testing

The Commission agrees with commenters that external penetration testing is a significant and essential component of an effective program of system safeguards risk analysis and oversight. Such testing is an essential means of fulfilling the testing requirement in the Commission's current system safeguards rules.

(2) External Penetration Testing Frequency

The Commission agrees with the comment that many risk based factors should inform the frequency of external penetration testing, and notes that this is true for all DCMs, SEFs, and SDRs. The Commission also agrees with the comments supporting the minimum frequency requirement of annual external penetration testing by covered DCMs and SDRs. As noted in the NPRM, this requirement is supported by generally accepted standards and best practices, which make it clear that such testing at least annually is essential to adequate system safeguards in today's cybersecurity environment. For this reason, the Commission disagrees with the suggestion that the frequency of such testing by covered DCMs and SDRs should be left to determination by those entities themselves. The proposal's minimum requirement was for a single annual test; although, as noted in the NPRM, adequate risk analysis could well require more frequent testing in light of the risks faced by a particular regulatee.[83] A separate, formal risk analysis made for the specific purpose of determining external penetration testing frequency is not required. Rather, external penetration testing is required as often as indicated by the ongoing, appropriate risk analysis inherent in a regulatee's statutorily-required program of risk analysis and oversight, conducted in light of generally accepted standards and best practices.

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[79] 80 FR 80139, 80152 (Dec. 23, 2015).

[80] *Id.* at 80152, 80153.

[81] *Id.* at 80153.

[82] *Id.* at 80152, 80153.

(3) External Penetration Testing by Independent Contractors

In determining the final rule's provisions regarding external penetration testing by independent contractors, the Commission has noted that, as set forth above, most commenters raised no issue with this requirement for covered DCMs and SDRs. As noted in the NPRM, generally accepted standards and best practices make it clear that independent testing by third party service providers is an essential component of an adequate testing regime, and that this is notably the case with respect to penetration testing.[84] The Commission believes that the independent viewpoint and approach provided by independent contractors, who can conduct a penetration test from the perspective of an outside adversary uncolored by insider assumptions or blind spots, will benefit covered DCM and SDR programs of risk analysis and oversight. Independent contractor penetration testing will strengthen Commission oversight of system safeguards, by providing an important, credible third source of information in addition to what is available from covered DCM or SDR staff and from the internal audit function of those entities. In light of these considerations, the Commission disagrees with the comments suggesting elimination of the requirement for the minimum annual external penetration test of a covered DCM or SDR to be conducted by independent contractors.

4. Internal Penetration Testing—§§ 37.1401(h)(4), 38.1051(h)(4), and 49.24(j)(4)

a. Proposed Rule

The NPRM called for all DCMs, SEFs, and SDRs to conduct internal penetration testing of a scope sufficient to satisfy the requirements in the proposed rule.[85] It proposed requiring all such entities to conduct external penetration testing at a frequency determined by an appropriate risk analysis, with a minimum frequency requirement of annual internal penetration testing for covered DCMs and SDRs.[86] The NPRM provided that all internal penetration testing by DCMs, SEFs, or SDRs should be conducted either by independent contractors or by employees not responsible for development or operation of the systems or capabilities being tested.[87]

b. Comments Received

(1) Requirement for Internal Penetration Testing

Commenters raised no issue with the NPRM's call for internal penetration testing. As noted above concerning external penetration testing, CME noted that penetration testing generally is a significant component of the program to identify and minimize sources of operational risk required of all DCMs, SEFs, and SDRs, and approved the flexibility concerning penetration test design provided in the NPRM. Also as noted above, Nadex stated its agreement with the NPRM's penetration testing requirements.

(2) Internal Penetration Testing Frequency

Commenters also raised no issue with the requirement for all DCMs, SEFs, and SDRs to conduct internal penetration testing at a frequency determined by appropriate risk analysis. As noted above, CME stated that many risk based factors should inform the frequency of penetration testing generally. With respect to the requirement for covered DCMs and SDRs to conduct internal penetration testing at least annually, ICE stated agreement with the proposal. Nadex agreed with the proposed penetration testing requirements generally. On the basis that that there is a scarcity of potential employees with the skill set required to conduct internal penetration testing without introducing risks into the production environment and other sensitive environments, CME suggested making annual internal penetration testing an objective rather than a requirement, so that covered DCMs and SDRs can prioritize truly effective testing over less skilled testing done merely to satisfy the annual requirement. As noted above, MGEX called for the final rule to leave the frequency of penetration testing to be determined by regulatees. ICE argued that regulatees should not be subject to a formal risk assessment to potentially determine a higher penetration testing frequency.

(3) Who Should Perform Internal Penetration Testing

Commenters raised no issue with the NPRM provision giving all DCMs, SEFs, and SDRs the choice of whether to have internal penetration testing performed by independent contractors or by employees not responsible for development or operation of the systems or capabilities tested.

c. Final Rule

The Commission has considered and evaluated the comments concerning internal penetration testing. For the reasons discussed below, the final rule will include the NPRM's internal penetration testing provisions as proposed.[88]

(1) Requirement for Internal Penetration Testing

The Commission agrees with commenters that external penetration testing is a significant and essential component of an effective program of system safeguards risk analysis and oversight. Such testing is an essential means of fulfilling the testing requirement in the Commission's current system safeguards rules.

(2) Internal Penetration Testing Frequency

The Commission agrees with the comment that many risk based factors should inform the frequency of internal penetration testing, and notes that this is true for all DCMs, SEFs, and SDRs. It also agrees with the comments supporting the minimum frequency requirement of annual internal penetration testing by covered DCMs and SDRs. As noted in the NPRM, this requirement, like the parallel requirement regarding external penetration testing, is supported by generally accepted standards and best practices, which make it clear that such testing at least annually is essential to adequate system safeguards in today's cybersecurity environment.[89] Accordingly, the Commission disagrees with the suggestions that annual internal penetration testing by covered DCMs and SDRs should be a mere objective, or that the frequency of such testing by covered DCMs and SDRs should be left to determination by those entities themselves. The Commission also notes, as it stated in the NPRM, that adequate risk analysis could well require more frequent testing in light of the risks faced by a particular regulatee.[90] A separate, formal risk analysis made for the specific purpose of determining internal penetration testing frequency is not required. Rather, internal penetration testing is required as often as indicated by the ongoing, appropriate risk analysis inherent in a regulatee's required program of risk analysis and oversight, conducted in light of generally accepted standards and best practices.

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[83] *Id.* at 80152.

[84] *Id.* at 80153.

[85] 80 FR 80139, 80152 (Dec. 23, 2015).

[86] *Id.* at 80152, 80153.

[87] *Id.*

[88] 80 FR 80139, 80152, 80153 (Dec. 23, 2015).

[89] *Id.*

(3) Who Should Perform Internal Penetration Testing

The Commission continues to believe, as provided in the NPRM, that it is appropriate to give all DCMs, SEFs, and SDRs the choice of whether to have internal penetration testing performed by independent contractors or by employees not responsible for development or operation of the systems or capabilities tested.[91] Commenters raised no issue with this provision.

5. Controls Testing—§§ 37.1401(h)(5), 38.1051(h)(5), and 49.24(j)(5)

a. Proposed Rule

The NPRM called for each DCM, SEF, and SDR to conduct controls testing of a scope sufficient to satisfy the scope requirements in the proposed rule, including testing of each control included in the entity's program of risk analysis and oversight.[92] It proposed each such entity to conduct controls testing at frequency determined by an appropriate risk analysis, with a minimum frequency requirement for covered DCMs and SDRs calling for testing of all controls every two years.[93] The NPRM provided that covered DCMs and SDRs could conduct such testing on a rolling basis over the minimum two-year period or over the minimum period determined by appropriate risk analysis, whichever is shorter.[94] The NPRM called for covered DCMs and SDRs to engage independent contractors to conduct testing of key controls no less frequently than every two years.[95] It provided that all other controls testing by covered DCMs and SDRs, and all controls testing by non-covered DCMs and SEFs, should be conducted either by independent contractors or by employees not responsible for development or operation of the systems or capabilities being tested.[96]

b. Comments Received

(1) Requirement for Controls Testing

CME and Nadex approved of the NPRM's call for controls testing. CME stated that the NPRM correctly identified controls testing as a crucial part of a program of risk analysis and oversight, and agreed with the categories which the current rules and the NPRM specify as included in such a program. CME also agreed with the NPRM's flexible approach to using best practices to inform the design and implementation of controls testing in light of risk analysis. ICE called for the final rule to eliminate the requirement for controls testing, arguing that many controls do not require testing, that few organizations have a static universe of controls, and that control weaknesses will come to light in vulnerability and penetration testing. Tradeweb asked the Commission to provide further guidance on how controls testing differs from vulnerability testing, whether Service Organization Controls ("SOC") 1 and 2 reports prepared in accordance with the American Institute of Certified Public Accountants' Statement on Standards for Attestation Engagements ("SSAE") Number 16 could be used for controls testing purposes, and whether penetrations tests could be used to fulfill controls testing requirements.

(2) Controls Testing Frequency

Regarding the minimum controls testing frequency of every two years proposed for covered DCMs and SDRs, CME commented that some less critical controls do not warrant testing on a two-year cycle, and cited best practices permitting controls testing on a three-year cycle. CME suggested that the final rule should call for the minimum controls testing frequency for covered DCMs and SDRs to be determined by risk analysis (as the NPRM proposed for non-covered DCMs and SEFs), or alternatively that a minimum frequency cycle of three years would be a reasonable alternative to the NPRM's proposed two-year cycle. CME suggested that, while many organizations will implement a two-year schedule for at least the testing of key controls, either of CME's proposed alternatives would make controls testing more cost effective, and increase focus on the most critical controls.

(3) Who Should Perform Controls Testing

CME commented that effective testing of key controls can be done by employees not responsible for development or operation of the controls tested, as well as by independent contractors, and that such independent employees' familiarity with the organization's controls can improve the efficiency and effectiveness of controls testing. Accordingly, CME suggested that, while independent contractor controls testing may be beneficial, the final rule should not exclude controls testing by independent employees, for example employees such as internal audit staff. DDR also commented that, where the NPRM proposed to require independent contractor testing, the final rule should give flexibility to use either independent contractors or independent employees. ICE suggested that the final rule should not require key controls testing at all. In support, ICE argued that the concept of key controls is not universally adopted; that risk analysis relies on testing of all controls in concert; that a testing requirement directed at key controls could result in organizations documenting fewer controls; and that the key controls testing proposal would impose a large burden for little or no practical improvement in security. MGEX stated that the NPRM required testing of all controls on a rolling basis by independent contractors every two years.

c. Final Rule

The Commission has considered and evaluated the comments concerning controls testing. For the reasons discussed below, the Commission is adopting the NPRM's requirement for all DCMs, SEFs, and SDRs to conduct testing of all their system safeguards-related controls, its requirement for such testing by all such entities to be conducted as often as indicated by appropriate risk analysis, and its requirement for independent contractor testing of the key controls of covered DCMs and SDRs. However, for the reasons discussed below concerning controls testing frequency, the Commission is modifying the proposed controls testing minimum frequency requirement for covered DCMs and SDRs, to call for testing of their key controls—including independent contractor testing of such controls—within a three-year rather than a two-year period.

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[90] *Id.*

[91] *Id.* at 80153.

[92] *Id.* at 80153, 80154.

[93] *Id.* at 80154.

[94] *Id.*

[95] *Id.*

[96] *Id.* at 80154, 80155.

(1) Requirement for Controls Testing

The Commission agrees with commenters that controls testing is a crucial part of a program of risk analysis and oversight and that best practices should inform the design and implementation of controls testing in light of risk analysis. In today's rapidly-changing cybersecurity threat environment, regular, ongoing controls testing that verifies over time the effectiveness of each system safeguards control used by a DCM, SEF, or SDR is essential to ensuring the continuing overall efficacy of the entity's system safeguards. The Commission disagrees with the suggestion that the final rule should not require any controls testing. As noted in the NPRM, generally accepted standards and best practices call for such testing.[97] Moreover, in conducting oversight of system safeguards, Commission staff have found a significant number of instances, at both larger and smaller entities, where (a) system malfunctions, market halts, and the success of cyber intrusions were caused by failures of both key and non-key controls; (b) such problems could have been prevented had the controls in question been tested; and (c) testing of the relevant controls had been entirely omitted or not done for substantial periods of time. The controls testing requirement set out in the NPRM is designed to remedy such situations, and ensure that controls testing by all DCMs, SEFs, and SDRs follows best practices. By design, the NPRM did not prescribe the design of the overall program of controls testing or the particular tests it may include. Various forms of testing, including vulnerability testing, penetration testing, SSAE16 SOC1 or SOC2 assessments, and others, may well contribute in varying degrees—subject to their particular natures and limitations—to an overall program for the testing of controls as called for by the NPRM. The Commission notes that the depth and coverage of a single assessment may not be sufficient to meet the final rule's testing scope requirements discussed below. It also notes that the proposed controls testing requirement gives DCMs, SEFs, and SDRs the flexibility to determine the appropriate combination of testing methods and techniques necessary to determine whether their controls are implemented correctly, operating as intended, and enabling them to meet the system safeguards requirements of the Commission's rules.

(2) Controls Testing Frequency

The Commission has noted the best practices cited by CME supporting controls testing on a three-year cycle. After due consideration, the Commission agrees that a three-year rather than two-year minimum controls testing frequency requirement for covered DCMs and SDRs may reduce costs and burdens, while providing beneficial flexibility in overall controls testing program design and still ensuring that the fundamental purposes of the CEA and the Commission's system safeguards rules are achieved. The NPRM called for covered DCMs and SDRs, as well as non-covered DCMs and SEFs, to conduct controls testing as frequently as appropriate risk analysis requires.[98] The Commission notes that this fundamental frequency requirement could well require a controls testing cycle shorter than three years, as acknowledged in the comment on this point. In light of these considerations, the final rule requires all DCMs, SEFs, and SDRs to test the controls included in their programs of risk analysis and oversight as frequently as appropriate risk analysis requires. At a minimum, it will require covered DCMs and SDRs to conduct the required key controls testing—including key controls testing by independent contractors as discussed below—no less frequently than every three years. As proposed in the NPRM, it will permit covered DCMs and SDRS to conduct such testing on a rolling basis, but require this to be done over the course of the minimum period or the period determined by an appropriate risk analysis, whichever is shorter.

(3) Who Should Perform Controls Testing

The Commission agrees with the comments noting that testing of key controls by both independent contractors and employees not responsible for development or operation of the controls tested can be valuable and effective. As noted in the NPRM, best practices recognize the value of, and recommend, both such approaches.[99] The Commission notes that the NPRM did not propose barring covered DCM or SDR employees from testing key controls; rather, it proposed that covered DCM and SDR testing of key controls include independent contractor testing of all such controls within the minimum period. As with penetration testing, the Commission believes that independent contractor testing of key controls will strengthen covered DCM and SDR programs of risk analysis and oversight, by providing a valuable outsider perspective concerning crucial safeguards uncolored by insider assumptions or blind spots. The Commission further believes that independent contractor testing of key controls will strengthen Commission oversight of system safeguards, by providing an important, credible third source of information concerning crucial safeguards in addition to what is available from covered DCM or SDR staff and from the internal audit function of those entities. As noted above, because best practices call for controls testing, the Commission disagrees with the comment suggesting that the final rule should not require testing of key controls by either independent contractors or employees. The NPRM did not require independent contractor testing of all controls, but rather required independent contractor testing of the key controls of covered DCMs and SDRs.[100]

6. Security Incident Response Plan Testing—§§ 37.1401(h)(6), 38.1051(h)(6), and 49.24(j)(6)

a. Proposed Rule

The NPRM called for each DCM, SEF, and SDR to conduct security incident response plan ("SIRP") testing of a scope sufficient to satisfy the scope requirements in the proposed rule.[101] It called for each such entity's SIRP to include, without limitation, the entity's definition and classification of security events, its policies and procedures for reporting and communicating internally and externally concerning security incidents, and the hand-off and escalation points in its security incident response process.[102] It proposed permitting each such entity to coordinate its SIRP testing with its BC–DR plan or other testing required by the applicable system safeguards rules.[103] The NPRM proposed requiring all DCMs, SEFs, and SDRs to conduct SIRP testing at a frequency determined by an appropriate risk analysis, with a minimum frequency requirement of annual SIRP testing for covered DCMs and SDRs.[104] Finally, the NPRM called for all DCMs, SEFs, and SDRs to have SIRP testing conducted by either independent contractors or employees not responsible for development or operation of the systems or capabilities tested.[105]

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[97] 80 FR 80139, 80152 (Dec. 23, 2015).

[98] 80 FR 80139, 80154 (Dec. 23, 2015).

[99] *Id.* at 80154, 80155.

[100] *Id.*

[101] *Id.* at 80155 through 80157.

[102] *Id.*

[103] *Id.* at 80157.

[104] *Id.*

[105] *Id.*

b. Comments Received

(1) Requirement To Maintain and Test a SIRP

Several commenters agreed with the NPRM's call for each DCM, SEF, and SDR to maintain and test a SIRP meeting the requirements in the proposal. CME called SIRPs an important tool for all entities in their efforts to be ready to face inevitable cyber attacks. CME noted its appreciation for the proposal's flexibility for entities to design their SIRP testing in light of their risk analysis, and for the proposal's approval of coordination of SIRP testing with other types of testing. ICE and Nadex also stated support for the NPRM's SIRP testing provision. However, while Tradeweb stated that having a SIRP is essential to the functioning of a SEF, it argued that the SIRP testing requirement should be reduced to annual review and approval of the SIRP by a SEF employee responsible for information security.

(2) SIRP Testing Frequency

No commenters expressed disagreement with the proposed requirement for all DCMs, SEFs, and SDRs to conduct SIRP testing as often as indicated by appropriate risk analysis. Regarding the proposed requirement for covered DCMs and SDRs to test their SIRPs once a year at a minimum, CME commented that at least annual SIRP testing is appropriate in today's cybersecurity environment.

(3) Who Should Conduct SIRP Testing

No commenters expressed disagreement with the proposed general requirement giving DCMs, SEFs, and SDRs the choice of whether to have SIRP testing conducted by independent contractors or employees. However, CME suggested that the final rule should permit SIRP testing to be led by an independent employee who is not responsible for development or operation of what is tested but who is responsible for design of the SIRP itself. CME stated that this would allow the entity to leverage its employees with expertise in crisis and risk management and in incident response and planning, for both planning and testing purposes, in a way that is optimal for the entity's system safeguards.

c. Final Rule

The Commission has considered and evaluated the comments concerning SIRP testing. For the reasons discussed below, the Commission is adopting the proposed requirements for each DCM, SEF, and SDR to maintain a SIRP (as defined and described) and test it as often as indicated by appropriate risk analysis, and the proposed requirement for each covered DCM and SDR to conduct SIRP testing at least annually. It is modifying the proposed provisions regarding who may conduct SIRP testing, to permit testing to be led or conducted either by independent contractors or by any entity employee.

(1) Requirement To Maintain and Test a SIRP

The Commission agrees with commenters that maintaining and testing a SIRP is important for effective system safeguards in today's cybersecurity environment. The Commission confirms that the proposed SIRP testing requirement is indeed intended to give DCMs, SEFs, and SDRs flexibility concerning the format and design of their SIRP testing, and concerning its coordination with other types of testing, so long as the entity's SIRP testing is consonant with appropriate risk analysis and enables fulfillment of the proposed scope requirements. The Commission disagrees with the suggestion that the requirement to test the SIRP should be reduced to mere annual review and approval of the SIRP by an employee responsible for information security. As noted in the NPRM, best practices emphasize that SIRP testing is crucial to effective cyber incident response in today's cybersecurity environment.[106] Failure to practice the cyber incident response process can delay or paralyze timely response and cause severe consequences.

(2) SIRP Testing Frequency

The Commission notes that no commenters disagreed with the requirement to conduct SIRP testing as often as indicated by appropriate risk analysis, and agrees with the comment that at least annual SIRP testing is appropriate for covered DCMs and SDRs in today's cybersecurity environment.

(3) Who Should Conduct SIRP Testing

The Commission has considered the suggestion that allowing SIRP testing to be led by an employee responsible for design of the SIRP itself could improve system safeguards in general and SIRP testing in particular. The Commission believes that this could provide useful benefits and flexibility to DCMs, SEFs, and SDRs, without impairing the purposes of the CEA and the Commission's regulations which SIRP testing is designed to advance. In addition, SIRP testing differs from the other types of testing specified in the final rule, in that what is tested is not automated systems but the security incident response plan itself, or in other words what people do if a security incident happens. Accordingly, the final rule calls for SIRP testing by all DCMs, SEFs, and SDRs to be conducted by either independent contractors or employees, without restricting which employees may lead or conduct the testing.

7. Enterprise Technology Risk Assessment—§§ 37.1401(h)(7), 38.1051(h)(7), and 49.24(j)(7)

a. Proposed Rule

The NPRM called for each DCM, SEF, and SDR to conduct enterprise technology risk assessment ("ETRA") of a scope sufficient to satisfy the scope requirements in the proposed rule.[107] It called for each DCM, SEF, and SDR to conduct an ETRA as often as required by appropriate risk analysis, and for covered DCMs and SDRs to do this at least annually.[108] It stated that all regulatees could conduct ETRAs by using independent contractors or employees not responsible for development or operation of the systems or capabilities being assessed.[109]

b. Comments Received

(1) ETRA Requirement

CME agreed that regular risk assessments should drive ongoing efforts to address cyber risks. Nadex stated its general agreement with the proposed ETRA requirement. ICE argued that the ETRA requirement is already adequately addressed by current Commission rules, and called for omission of the ETRA requirement in the final rule. ICE also argued that the proposed ETRA requirement is not cyber-specific and does not focus on the confidentiality, availability, or integrity of data. Tradeweb agreed that assessment of technology risks is essential, but argued that the ETRA requirement is duplicative of the other proposed testing requirements.

(2) ETRA Frequency and Scope

CME suggested that ETRAs would benefit from incorporating the results of controls testing and other testing, and suggested that it would be beneficial and less costly to align the requirement for completing an ETRA with the applicable frequency requirement for controls testing. Nadex requested clarification of whether the ETRA could incorporate the results of other required testing as reported to management and the board of directors, or whether a full stand-alone assessment is required. Tradeweb suggested that an annual full assessment would be burdensome and costly, and suggested that, in lieu of repeated full assessments, annual review and approval of previous assessments should be sufficient.

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[106] 80 FR 80139, 80155 through 80156 (Dec. 23, 2015).

[107] *Id.* at 80157 through 80159.

[108] *Id.* at 80158.

[109] *Id.* at 80158, 80159.

(3) Who Should Conduct ETRAs

No commenters expressed disagreement with the NPRM provision calling for ETRAs to be conducted by either independent contractors or employees not responsible for development or operation of the systems or capabilities assessed. ICE suggested that ETRAs should be carried out by enterprise risk program staff rather than information security staff.

c. Final Rule

The Commission has considered and evaluated the comments concerning ETRAs. For the reasons discussed below, the Commission is adopting the proposed requirements, but is adding a provision in the final rule stating that a DCM, SEF, or SDR that has conducted an enterprise technology risk assessment as required may conduct subsequent assessments by updating the previous assessment.

(1) ETRA Requirement

The Commission agrees with the comment that regular risk assessments should drive ongoing efforts to address cyber risks. The Commission continues to believe that conducting regular ETRAs is essential to meeting the testing requirements of its current system safeguards rules and maintaining system safeguards resiliency in today's cybersecurity environment. Regular, ongoing identification, estimation, and prioritization of risks that could result from impairment of the confidentiality, integrity, or availability of data and information or the reliability, security, and capacity of automated systems is crucial to effective system safeguards. As noted in the NPRM, regular performance of ETRAs is a well-established best practice.[110] The proposed ETRA requirement is designed to provide an overarching vehicle through which a DCM, SEF, or SDR draws together and uses the results and lessons learned from each of the types of cybersecurity and system safeguards testing addressed in the proposed rule, in addition to other methods of risk identification, in order to identify and mitigate its system safeguards-related risks. ETRAs can also inform the design of the other types of testing. As such, the ETRA requirement it is not duplicative of the other testing requirements, but rather an enhancement of their value. The Commission also notes that, as discussed above, multiple NPRM provisions to be adopted in the final rule call for determinations made in light of the appropriate risk analysis that is required by the CEA. Accordingly, a regulatee's current ETRA summarizing in writing both its analysis of its system safeguards risks and the basis for that analysis and for the entity's system safeguards decisions will be a key tool for Commission determination of the adequacy of the entity's compliance with system safeguards requirements. The Commission therefore disagrees with the suggestion that the final rule should omit the ETRA requirement.

(2) ETRA Frequency and Scope

While the Commission agrees that the results of other types of testing can usefully inform ETRAs, the Commission believes that, as best practices provide, regularly updated ETRAs are crucial to the effectiveness of system safeguards in today's rapidly changing cybersecurity environment. The Commission therefore does not accept the suggestion that ETRAs should only be required as often as a complete cycle of controls testing is completed, not least because the final rule is adopting the suggestion to lengthen that cycle to three rather than two years. The Commission reiterates that the results of other required forms of system safeguards testing can and should be incorporated in ETRAs, and in turn should be informed and driven by ETRAs. Because ETRAs that provide current assessment of current risks are essential to effective programs of system safeguards risk analysis and oversight, as discussed above, the Commission disagrees with the suggestion that annual review and reapproval of previous assessments would be sufficient. However, the Commission believes that thorough updating of a previous assessment conducted in compliance with the ETRA requirements set out in the NPRM can be sufficient to fulfill the purposes of an appropriate ETRA, and can reduce costs and burdens without impairment of the purposes of the CEA and the system safeguards rules. Accordingly the final rule clarifies that such updating of a previous fully compliant ETRA, in light of current risks and circumstances, can fulfill the ETRA requirement. The Commission emphasizes that best practices require all DCMs, SEFs, and SDRs to conduct risk assessment and monitoring on an ongoing basis, as frequently as the entity's risks and circumstances require. The final rule requirement for covered DCMs and SDRs to prepare a written assessment on at least an annual basis does not eliminate the need for a covered DCM or SDR to conduct risk assessment and monitoring on an ongoing basis, as best practices require. Rather, the minimum frequency requirement is intended to formalize the risk assessment process and ensure that it is documented at a minimum frequency.

(3) Who Should Conduct ETRAs

The NPRM's call for ETRAs to be conducted by either independent contractors or employees not responsible for development or operation of the systems or capabilities assessed drew no objections from commenters. The Commission also notes that the NPRM did not prescribe whether enterprise risk program staff, information security staff, or both should conduct ETRAs, but deliberately left flexibility to DCMs, SEFs, and SDRs in this regard, so long as the employees conducting the ETRA have the independence specified.

F. Scope of Testing and Assessment—§§ 37.1401(k), 38.1051(k), and 49.24(l)

1. Proposed Rule

The NPRM called for the scope of all system safeguards testing and assessment to be broad enough to include all testing of automated systems and controls necessary to identify any vulnerability which, if triggered, could enable an intruder or unauthorized user to take any of a number of undesirable actions.[111] These actions were specified to include interfering with the regulatee's operations or fulfillment of its statutory and regulatory responsibilities; impairing or degrading the reliability, security, or capacity of the regulatee's automated systems; adding to, deleting, modifying, exfiltrating, or compromising the integrity of data; or taking any other unauthorized action affecting the regulatee's regulated activities or the hardware or software used in connection with them.[112]

2. Comments Received

A number of commenters suggested that the scope provisions of the NPRM were overbroad, and that the proposed requirement to perform "all" testing necessary to identify "any" vulnerability was impossible to achieve in practice. CME argued that it is infeasible to conduct testing to identify

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[110] *Id.* at 80158.

[111] 80 FR 80139, 80159 (Dec. 23, 2015).

[112] *Id.*

"any" potential vulnerability, and called for the final rule to provide that testing scope should be risk-based, to enable focus on the most likely scenarios and highest value information assets. CME suggested that the NPRM's overbroad scope provision could impose outsized costs without yielding commensurate benefits. ICE stated that it is impossible to predict and test for all cyber attack scenarios. Nadex agreed with the general thrust of the proposed scope provision, but argued that the requirement to identify "any" vulnerability was too broad, and that it is unrealistic and likely impossible to guarantee testing that could provide 100 percent security against all vulnerabilities or unauthorized actions. WMBAA stated concern that the proposed scope provision would set a standard impracticable for regulatees to achieve, because no regulatee could guarantee that "any" vulnerability would be uncovered by testing, and because it is impracticable to test all potential avenues for penetrating regulatee systems. WMBAA questioned whether any penetration testing firm would be willing to certify that its testing procedures met such a standard. Nadex, CFE, Tradeweb, and WMBAA suggested that the NPRM scope provision could be read as imposing a strict liability standard under which any successful cyber attack would mean a violation of the testing scope provisions must have occurred. CME, Nadex, CFE, DDR, Tradeweb, and WMBAA requested that the Commission consider establishing "safe harbor" provisions under which an entity that has made good faith efforts to adhere to one or more designated cybersecurity frameworks or statements of cybersecurity best practices would be deemed to be in compliance with the system safeguards rules. Nadex called for the final rule scope provision to limit responsibility to a reasonableness standard. Nadex also asked the Commission to clarify that the current cybersecurity threat analysis a regulatee should consider in assessing potential cyber adversary capabilities to determine testing scope is limited to the organization's internal risk assessments.

3. Final Rule

The Commission has considered and evaluated the comments concerning the testing scope provision of the NPRM.[113] For the reasons discussed below, the Commission is modifying the scope provision in the final rule to call for the scope of testing to be based on appropriate risk and threat analysis.

The Commission does not intend the scope provision of the testing rule to create any sort of strict liability standard with respect to system safeguards testing. On the contrary, the Commission recognizes that in today's cybersecurity environment no entity can be expected to be immune from cyber intrusions. As noted in the NPRM, one fundamental goal of the Commission's system safeguards and cybersecurity testing rules is enhancing regulatees' ability to detect, contain, respond to, and recover from cyber intrusion when they happen.[114] In conducting oversight of the system safeguards of DCMs, SEFs, and SDRs, the Commission looks and will continue to look to what a reasonable and prudent DCM, SEF, or SDR would do with respect to system safeguards in light of generally accepted standards and best practices, and in light of informed risk analysis appropriate to the circumstances and risks faced by the DCM, SEF or SDR in question. The Commission does not believe that the mere fact that a DCM, SEF, or SDR has suffered a cyber intrusion means that that entity has failed to comply with system safeguards rules. The Commission would be concerned when examination shows that a DCM, SEF, or SDR failed to follow the best practices that a reasonable entity in its circumstances and facing its risks should follow.

The Commission also recognizes that no program of cybersecurity testing can be expected to detect every possible vulnerability or avenue of intrusion. Here, too, the touchstone is what system safeguards testing a reasonable and prudent DCM, SEF, or SDR would conduct in light of generally accepted standards and best practices, and in light of informed risk analysis appropriate to the circumstances and risks faced by the DCM, SEF or SDR in question. The Commission evaluates, and will continue to evaluate, system safeguards testing in that light.

Given today's rapidly changing cyber threat environment and the resulting continuous evolution of generally accepted standards and best practices with respect to system safeguards, the Commission does not believe it would be appropriate to label compliance with any one source of best practices as written at a particular point in time as a "safe harbor" with respect to system safeguards compliance. The Commission believes that the appropriate way to address the concerns underlying the comments seeking designation of such safe harbors is the standard discussed above: Reasonable and prudent system safeguards testing in light of generally accepted standards and best practices, and in light of informed risk analysis appropriate to the circumstances and risks faced by the DCM, SEF or SDR in question.

The Commission disagrees with the comment asking confirmation that the current cybersecurity threat analysis a DCM, SEF, or SDR should consider in designing its system safeguards testing is limited to the organization's internal risk assessments. As noted in the NPRM, a DCM, SEF, or SDR acting as a reasonable and prudent regulatee would act in light of best practices and the current cybersecurity threat environment should obtain and consider threat analysis available from outside sources in addition to conducting its own threat analysis.

For those reasons, the Commission agrees with the comments suggesting that the scope provisions of the final rule should call for testing scope to be based on appropriate risk and threat analysis. In order to provide the clarity requested by commenters, the final rule calls for the scope of system safeguards testing to include the testing that the regulatee's program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable the deleterious actions by intruders or unauthorized users listed in the scope provisions of the proposed rules. The Commission agrees with the comments suggesting that this approach will avoid imposing undue burdens and costs, while supporting the purposes of the CEA and the Commission's system safeguards rule.

G. Internal Reporting and Review—§§ 37.1401(l), 38.1051(l), and 49.24(m)

1. Proposed Rule

The NPRM called for DCM, SEF, and SDR senior management and boards of directors to receive and review reports setting forth the results of the testing and assessment required by the system safeguards rules.[115] It also called for these entities to establish and follow procedures for remediation of issues identified through such review, and for evaluation of the effectiveness of testing and assessment protocols.[116]

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[113] 80 FR 80139, 80159 (Dec. 23, 2015).

[114] *Id.* at 80156.

[115] 80 FR 80139, 80160 (Dec. 23, 2015).

[116] *Id.*

2. Comments Received

a. Board and Senior Management Oversight

Several commenters agreed with the NPRM's call for oversight of system safeguards and cybersecurity by boards of directors and senior management. CME and MGEX recognized the importance of effective board oversight and the need to keep the board and senior management up to date in this regard. DDR said it agreed with the Commission that active board and senior management supervision of system safeguards promotes more efficient, effective, and reliable risk management. However, ICE argued that internal reporting and review of test results should be limited to reports to senior management, and that boards of directors should not be required to review even high-level, high-priority test findings, but instead should only be apprised of enterprise-level high risk issues when identified thresholds (unspecified by ICE) are crossed.

b. Level of Detail for Board and Senior Management Review

Commenters requested clarification concerning what level of detail the NPRM called for boards and senior management to review in terms of test results. ICE, MGEX, and Nadex noted that test result reports can be voluminous, technical, and complex, and that requiring boards and senior management to review each such document could produce an undue burden without commensurate benefits. MGEX and Nadex therefore asked the Commission to clarify in the final rule that what is required is board and management review of appropriate summaries and compilations of test and assessment results. DDR suggested it should be the regulatee's responsibility to provide the board and senior management with the level of test result information appropriate for enabling their effective oversight of system safeguards. DDR asked the Commission to confirm in the final rule that there are multiple ways this can be done. Nadex also asked the Commission to clarify that board consideration of test results in the course of regularly scheduled meetings would be an acceptable way of fulfilling this requirement.

3. Final Rule

The Commission has considered and evaluated the comments concerning the internal reporting and review provision of the NPRM.[117] For the reasons discussed below, the Commission is adopting the provision as proposed.

a. Board and Senior Management Oversight

The Commission agrees with the comments recognizing the importance of effective board of directors and senior management of system safeguards, and the resulting need to keep the board and senior management informed appropriately concerning the results of cybersecurity testing and assessment. In today's cybersecurity threat environment, active board and senior management supervision of system safeguards is essential to the enterprise-wide, effective risk management that the CEA and Commission regulations require of DCMs, SEFs, and SDRs. Such active supervision would be impossible if board members and senior managers were not appropriately apprised of the results of cybersecurity testing and assessment, and thus lacked an essential level of knowledge of the organization's system safeguards risks. As noted in the NPRM, generally accepted standards and best practices emphasize the importance of board and senior management oversight of cybersecurity, and make it clear that the absence of proactive board and senior management involvement in cybersecurity can make regulatees more vulnerable to successful cyber attacks.[118] Accordingly, best practices call for directors to either have the appropriate level of experience and knowledge of information technology and related risks themselves or obtain the assistance of expert consultants in this regard. In the Commission's view, protection of the public interest and the economic security of the United States with respect to derivatives markets in today's cybersecurity threat environment demands no less. For these reasons, the Commission disagrees with the suggestion that boards of directors should not be involved in internal reporting and review of cybersecurity test results.

b. Level of Detail for Board and Senior Management Review

The Commission also agrees with the comments suggesting that test result reports can be voluminous, technical, and complex, and that effective board of directors and senior management oversight of system safeguards does not require board or senior management review of every detail of each such report. The Commission further agrees with the comments suggesting that DCMs, SEFs, and SDRs should provide their boards and senior management with a level of test result information that enables their effective, knowledgeable oversight of cybersecurity and system safeguards in light of the risks faced by their organizations. While the internal reporting and review provision of the final rule requires that the board receive and review test results, it does not prevent an organization from including additional, clarifying documents, such as executive summaries or compilations, with the required reports. Board and senior management review of appropriate summaries and compilations of test and assessment results can be an effective and acceptable way of fulfilling the internal reporting and review requirement, provided that such summaries give board members and senior management sufficiently detailed information to enable them to conduct effective and informed oversight. The appropriate level of information should also enable boards and senior management to fulfill this provision's requirement for them to evaluate the overall effectiveness of testing and assessment protocols, and direct and oversee appropriate remediation of issues identified through their review of test results. As noted in the NPRM, best practices call for boards and senior management to review the overall effectiveness of the testing program.[119]

H. Remediation—§§ 37.1401(m), 38.1051(m), and 49.24(n)

1. Proposed Rule

The NPRM called for each DCM, SEF, and SDR to analyze the results of the testing and assessment required by the system safeguards rules in order to identify all vulnerabilities and deficiencies in its systems.[120] It proposed requiring each such entity to remediate those vulnerabilities and deficiencies to the extent necessary to enable the entity to meet the requirements of the system safeguards rules and of its statutory and regulatory responsibilities.[121] It called for such remediation to be timely in light of appropriate risk analysis with respect to the risks presented.

2. Comments Received

Nadex and Tradeweb suggested that the proposed requirement to identify and remediate "all" vulnerabilities and deficiencies in a regulatee's systems was impossible to achieve in practice. Nadex observed that other discussion in the NPRM indicated Commission intent to require remediation of vulnerabilities and deficiencies identified in the testing results, and suggested amending the final rule to make this clear. Noting that remediation after a cyber attack often takes time, Tradeweb argued that regulatees should not be penalized for that fact, and requested Commission guidance on what constitutes timely remediation, perhaps including specification that remediation over nine to twelve months would be timely.

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[117] 80 FR 80139, 80160 (Dec. 23, 2015).

[118] 80 FR 80139, 80160 (Dec. 23, 2015).

[119] 80 FR 80139, 80160 (Dec. 23, 2015).

[120] 80 FR 80139, 80160 (Dec. 23, 2015).

[121] *Id.*

3. Final Rule

The Commission has considered and evaluated the comments concerning the remediation provision of the NPRM. For the reasons discussed below, the Commission is modifying the remediation provision in the final rule require DCMs, SEFs, and SDRs to: (1) Identify and document the vulnerabilities and deficiencies revealed by the testing called for in the system safeguards rules; and (2) conduct and document an appropriate analysis of the risks presented, in order to determine and document whether to remediate or accept each such risk. The Commission is adopting the requirement for the entity to remediate such risks in a timely manner in light of appropriate risk analysis as proposed.

The Commission agrees with commenters that a requirement calling for a DCM, SEF, or SDR to remediate all vulnerabilities and deficiencies could be read as overbroad and impossible in practice. As suggested in a comment, the intent of the NPRM remediation provision was in fact to require remediation of the vulnerabilities and deficiencies disclosed through the regulatee's program of risk analysis and oversight, which includes testing of appropriate scope. In response to the comments received, the Commission is narrowing the remediation requirement to address remediation or acceptance of the vulnerabilities and deficiencies of which the entity is aware or through an appropriate program of risk analysis and oversight should be aware, rather than the remediation of all vulnerabilities and deficiencies. This revision is being made to reduce burdens and costs to the extent possible without impairing the purposes of the CEA and the Commission's system safeguards regulations. Best practices call for organizations to conduct appropriate risk analysis with respect to vulnerabilities and deficiencies disclosed by testing, in order to determine whether to remediate or accept the risks presented.[122] Documentation of such analysis and decisions is needed for both an effective program of risk analysis and effective Commission oversight of system safeguards. The NPRM proposal to require identification of vulnerabilities was intended to include their documentation. Effective remediation would be impossible without documentation of both the vulnerabilities in question and the remediation steps needed. Accordingly, the Commission believes regulatees would create such documentation in the normal course of business. However, because documentation was not explicitly required in the proposal, the Commission is treating the final rule documentation requirement as a possible, slight additional burden. The Commission notes, however, that in the context of the burden reduction resulting from requiring regulatees to identify and remediate the vulnerabilities of which they are or should be aware, rather than to identify "all" vulnerabilities as proposed in the NPRM, the overall effect of the final rule remediation provision represents a considerable reduction in burden and cost over what was proposed.

The Commission is aware that appropriate and effective remediation following a cyber attack often must proceed over a reasonable period of time, determined by the nature of the intrusion and the mitigation steps needed, and it takes this fact into account in determining whether remediation is timely. The Commission does not believe it is practicable to codify specific periods of time as constituting timely remediation, since what is timely and appropriate depends on the particular circumstances and risks involved in a given situation.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.[123] The rules adopted herein will affect DCMs, SEFs, and SDRs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[124] The Commission previously determined that DCMs, SEFs, and SDRs are not small entities for the purpose of the RFA.[125] The Commission received no comments on the impact of the rules contained herein on small entities. Therefore, the Chairman, on behalf of the Commission and pursuant to 5 U.S.C. 605(b), certifies that the final rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. Introduction

The Paperwork Reduction Act of 1995 ("PRA")[126] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The final rules contain recordkeeping and reporting requirements that are collections of information within the meaning of the PRA. In accordance with the requirements of the PRA, the Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As discussed below, the final rules contain provisions that qualify as collections of information, for which the Commission has already sought and obtained control numbers from OMB. The titles for these collections of information are "Part 38—Designated Contract Markets" (OMB Control Number 3038–0052), "Part 37—Swap Execution Facilities" (OMB Control Number 3038–0074), and "Part 49—Swap Data Repositories; Registration and Regulatory Requirements" (OMB Control Number 3038–0086). With the exception of § 38.1051(n) that requires all DCMs to submit annual trading volume information to the Commission, the final rules will not impose any new recordkeeping or reporting requirements that are not already accounted for in existing collections 3038–0052,[127] 3038–0074,[128] and 3038–0086.[129]

2. Clarifications of Collections 3038–0052, 3038–0074, and 3038–0086

As stated in the NPRM, all DCMs, SEFs, and SDRs are already subject to system safeguard-related books and records obligations.[130] The final rules amend §§ 38.1051(g), 37.1041(g), and 49.24(i) to clarify the system safeguard-related books and records obligations for all DCMs, SEFs, and SDRs. The Commission is adopting these provisions as proposed. Specifically, §§ 38.1051(g), 37.1041(g), and 49.24(i) require all DCMs, SEFs, and SDRs to provide the Commission with the following system safeguards-related books and records promptly upon request of any Commission representative: (1) Current copies of the BC–DR plans and other emergency procedures; (2) all assessments of the entity's operational risks or system safeguard-related controls; (3) all reports concerning system safeguards testing and assessment required by this chapter, whether performed by independent contractors or employees of the DCM, SEF, or SDR; and (4) all other books and records requested by Commission staff in connection with Commission oversight of system safeguards pursuant to the Act or Commission regulations, or in connection with Commission maintenance of a current profile of the entity's automated systems. The NPRM invited public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements or changes to the existing collection requirements would result from the proposed clarifying amendments.[131] The Commission did not receive any comments that addressed whether additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the adoption of the proposed rules.[132] In light of the above, the Commission believes that §§ 38.1051(g), 37.1041(g), and 49.24(i) do not impact the burden estimates currently provided for in OMB Control Numbers 3038–0052, 3038–0074, and 3038–0086.

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[122] For clarity, the Commission notes that it sees the term "remediation" as including mitigation and avoidance of risks as discussed in some sources of best practices. *See, e.g.,* NIST SP 800–39, at 41–43.

[123] 5 U.S.C. 601 *et seq.*

[124] *See* 47 FR 18618 through 18621 (Apr. 30, 1982).

[125] *See* 47 FR 18618, 18619 (Apr. 30, 1982) discussing DCMs; 78 FR 33548 (June 4, 2013) discussing SEFs; 76 FR 54575 (Sept. 1, 2011) discussing SDRs.

[126] 44 U.S.C. 3501 *et seq.*

[127] *See* OMB Control No. 3038–0052, available at *http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0052.*

[128] *See* OMB Control No. 3038–0074, available at *http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0074.*

[129] *See* OMB Control No. 3038–0086, available at *http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0086.*

3. Revision to Collection 3038–0052

The final DCM rules will require a new information collection which is covered by OMB Control No. 3038–0052. Commission regulation § 38.1051(n) requires each DCM to provide to the Commission its annual total trading volume for calendar year 2015 and each calendar year thereafter. This information is required for 2015 within 30 calendar days of the effective date of the final rules, and for 2016 and subsequent years by January 31 of the following calendar year.

The Commission requested comment concerning the accuracy of its estimate concerning the proposed reporting requirements in § 38.1051(n).[133] Although the Commission did not receive any comment concerning the accuracy of its estimate, the Commission received a comment from CME that the Commission should consider alternatives to the reporting requirements in proposed § 38.1051(n) because the Commission currently receives daily trade reports regarding volume pursuant to DCM Core Principle 8 and part 16 of the Commission's regulations. The Commission notes that while it receives daily trade information from DCMs pursuant to part 16, it does not receive total annual trading volume from DCMs. Additionally, the Commission believes that Core Principle 8 is inapplicable because it requires DCMs to publish daily volume, but does not require submission of that information to the Commission. The Commission's rules do not currently require the submission of annual trading volume, which is essential for the Commission to accurately evaluate whether a particular DCM must comply with the enhanced system safeguard requirements. The Commission believes that DCMs generally calculate their annual trading volume in the usual course of business and any associated costs incurred by DCMs to comply with this provision will be minimal.

Currently, there are 15 registered DCMs that will be required to comply with the annual trading volume information. Consistent with its estimate in the NPRM, the Commission estimates that the information collection required associated with the final rule will impose an average of 0.5 hours annually per respondent.[134] The estimated annual burden for 3038–0052 was calculated as follows:

Estimated number of respondents: 15.

Annual responses by each respondent: 1.

Total annual responses: 15.

Estimated average hours per response: 0.5.

Aggregate annual reporting burden: 7.5.

The final rule requiring the submission of annual trading volume information to the Commission will result in an annual cost burden of approximately $24.80 per respondent.[135] The Commission based its calculation on an hourly wage of $49.59 for a Compliance Officer.[136]

Accordingly, the Commission intends to amend existing collection 3038–0052 to account for the submission of annual trading volume information to the Commission. The amendment will add an estimated annual burden of 7.5 hours to the existing collection, which currently includes an annual reporting burden of 8,670 hours. Therefore, the new annual reporting burden for collection 3038–0052 will be 8,677.5 hours.

C. Consideration of Costs and Benefits

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its discretionary actions before promulgating a regulation under the CEA or issuing certain orders.[137] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In adopting the final system safeguard rules for DCMs, SEFs, and SDRs, the Commission has considered the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

To further the Commission's consideration of the costs and benefits imposed by its regulations, the Commission invited comments from the public on all aspects of the Consideration of Costs and Benefits section of the NPRM. The Commission specifically invited responses to a series of questions regarding costs and benefits, and specifically invited commenters to provide data or other information quantifying such costs and benefits. The Commission received one comment that provided quantitative information pertaining to the costs associated with certain proposed provisions.[138] CME estimated that the additional cost that it would incur over a two year period is over $7.2 million.[139] A number of other commenters did not provide specific cost estimates, but provided comments concerning the costs generally. The Commission is addressing both types of comments in the discussion that follows. As discussed more fully below, the Commission believes that the changes to the final regulations will reduce the overall costs of compliance as compared to the NPRM.

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[130] 80 FR 80139, 80162 (Dec. 23, 2015).

[131] *Id.*

[132] As discussed in the preamble, the Commission received comment letters from WMBAA, CME, and ICE concerning the books and records obligations generally.

[133] 80 FR 80139, 80163 (Dec. 23, 2015).

[134] *Id.*

[135] *Id.*

[136] In arriving at a wage rate for the hourly costs imposed, Commission staff used the National Industry-Specific Occupational Employment and Wage Estimates, published in May (2015 Report). The hourly rate for a Compliance Officer in the Securities and Commodity Exchanges section as published in the 2015 Report was $49.59 per hour. In the NPRM, the Commission's estimate of $22.015 per respondent was based on the hourly wage of $44.03 for a Compliance Officer in the 2014 Report. 80 FR 80139, 80163 (Dec. 23, 2015).

[137] 7 U.S.C. 19(a).

[138] CME provided cost estimates for the proposed independent contractor requirements, conducting ETRAs, and controls testing.

As stated in the NRPM, Commission staff collected preliminary information from some DCMs and SDRs regarding their current costs associated with conducting vulnerability testing, external and internal penetration testing, controls testing, and enterprise technology risk assessments (“DMO Preliminary Survey”).[140] Some of the cost estimates provided by the DCMs and SDRs included estimates at the parent company level of the DCM and SDR because the entities were unable to apportion the actual costs to a particular entity within their corporate structure.[141] In some cases, apportioning costs could be further complicated by sharing of system safeguards among DCMs, SEFs, SDRs, or DCOs. Therefore, in the data collected for the DMO Preliminary Survey, it was difficult in some cases to distinguish between the system safeguard-related costs of DCMs, SEFs, SDRs, and DCOs. This distinction was highlighted by CME in its comment letter by noting that its cost estimates do not separate out costs for clearing, trading, or data reporting. Given the lack of quantitative data provided in the comments, the Commission is relying on the data collected from the DMO Preliminary Survey concerning the costs for conducting vulnerability testing, external and internal penetration testing, controls testing, and enterprise technology risk assessments.[142]

2. Baseline for Final Rules

The Commission recognizes that any economic effects, including costs and benefits, should be evaluated with reference to a baseline that accounts for current regulatory requirements. As stated in the NPRM, the baseline for this cost and benefit consideration is the set of current requirements under the Act and the Commission’s regulations for DCMs, SEFs, and SDRs.[143] The Act requires each DCM, SEF, and SDR to develop and maintain a program of system safeguards-related risk analysis and oversight to identify and minimize sources of operational risk.[144] Additionally, the Act mandates that each DCM, SEF, and SDR must develop and maintain automated systems that are reliable, secure, and have adequate scalable capacity, and must ensure system reliability, security, and capacity through appropriate controls and procedures.[145] The Commission’s current system safeguards rules for DCMs, SEFs, and SDRs mandate that, in order to achieve these statutory requirements, each DCM, SEF, and SDR must conduct testing and review sufficient to ensure that its automated systems are reliable, secure, and have adequate scalable capacity.[146]

The final rules clarify the system safeguards and cybersecurity testing requirements for DCMs, SEFs, and SDRs, by specifying and defining five types of system safeguards testing that a DCM, SEF, or SDR necessarily must perform to fulfill the testing requirement. For the following reasons, the Commission believes that the final rules calling for each DCM, SEF, and SDR to conduct each of these types of testing and assessment will not impose any new costs on DCMs, SEFs, and SDRs. Each of the types of testing and assessment required under the final rules—vulnerability testing, penetration testing, controls testing, security incident response plan testing, and enterprise technology risk assessment—is a generally recognized best practice for system safeguards. Moreover, the Commission believes that it is essentially impossible for a DCM, SEF, or SDR to fulfill its current obligation to conduct testing sufficient to ensure the reliability, security, and capacity of its automated systems without conducting each type of testing addressed by the final rules. This has been true since before the testing requirements of the Act and the current regulations were adopted, and it would be true today even if the Commission were not adopting the final rules.[147] If compliance with the clarified testing requirements herein results in costs to DCMs, SEFs, and SDRs, the Commission believes that those are costs associated with compliance with current testing requirements and not the final rules.[148]

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[139] CME noted that its cost estimate also includes costs associated with the Commission’s parallel NPRM that addresses system safeguards for DCOs. Additionally, CME noted that its estimate “does not separate out the costs for clearing, trading, or data reporting.”

[140] 80 FR 80139, 80165 (Dec. 23, 2015). The Commission notes that the DCMs and SDRs that provided the information for the DMO Preliminary Survey requested confidential treatment.

[141] It is not uncommon for entities within the same corporate structure to share automated systems and system safeguard programs.

[142] The estimates from the DMO Preliminary Survey provided in this section are presented as simple cost averages of the affected entities’, without regard to the type of entity. By definition, averages are meant to serve only as a reference point; the Commission understands that due to the nature of the requirements in relation to the current practices at a covered DCM or an SDR, some entities may go above the average while others may stay below.

[143] 80 FR 80139, 80164 (Dec. 23, 2015).

[144] CEA section 5(d)(20) (for DCMs); CEA section 5h(f)(14) (for SEFs); CEA section 21(f)(4)(A) and 17 CFR 49.24(a) (for SDRs).

[145] *Id.*

[146] 17 CFR 38.1051(h) (for DCMs); 17 CFR 37.1401(g) (for SEFs); 17 CFR 49.24(j) (for SDRs).

[147] The Commission’s current rules and guidance provide that a DCM’s, SEF’s, or SDR’s entire program of risk analysis and oversight, which includes testing, should be based on generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of automated systems. *See* Appendix A to Part 37, Core Principle 14 of Section 5h of the Act—System Safeguards (a) Guidance (1) Risk analysis and oversight program (for SEFs); 17 CFR 38.1051(h) (for DCMs); 17 CFR 49.24(j) (for SDRs). Each of the types of testing addressed in the final rules—vulnerability testing, penetration testing, controls testing, security incident response plan testing, and enterprise technology risk assessment—has been a generally recognized best practice for system safeguards since before the testing requirements of the Act and the current regulations were adopted. The current system safeguards provisions of the CEA and the Commission’s regulations became effective in August 2012. Generally accepted best practices called for each type of testing specified in the final rule well before that date, as shown in the following examples. Regarding all five types of testing, *see, e.g.*, NIST SP 800–53A, Rev. 1, Guide for Assessing the Security Controls in Federal Information Systems and Organizations (“NIST 800–53A Rev. 1”), at E1, F67, F230, F148, and F226, June 2010, available at *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf*. Regarding vulnerability testing, *see, e.g.*, NIST SP 800–53A Rev. 1, at F67, June 2010, available at *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf;* and NIST SP 800–115, Technical Guide to Information Security Testing and Assessment, at 5–2, September 2008, available at *http://csrc.nist.gov/publications/nistpubs/800-115/SP800-115.pdf*. Regarding penetration testing, *see, e.g.*, NIST Special Publication (“SP”) 800–53A, Rev. 1, at E1, June 2010, available at *http://csc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf;* and NIST 800–115, at 4–4, September 2008, available at *http://csrc.nist.gov/publications/nistpubs/800-115/SP800-115.pdf*. Regarding controls testing, *see, e.g.*, NIST 800–53A, Rev. 1, at 13 and Appendix F1, June 2010, available at *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf*. Regarding security incident response plan testing, *see, e.g.*, NIST 800–53A, Rev. 1, at F148, June 2010, available at *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf*. Regarding enterprise technology risk assessment, *see, e.g.*, NIST 800–53A, Rev. 1, at F226, June 2010, available at *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf*.

[148] MGEX commented that it has defined and implemented a system that it believes conforms to industry best practices. MGEX further commented that unless each organization’s structure is identical to the CFTC’s rulemakings, there will be a cost of compliance. Throughout this section, the Commission has articulated areas where it believes the new rules will impose new costs relative to the current requirements. Accordingly, unless otherwise stated, the Commission believes that any additional costs incurred by DCMs, SEFs, and SDRs are attributable to the current requirements.

The Commission believes that new costs will be imposed by the minimum testing frequency and independent contractor requirements for covered DCMs and SDRs included in the final rules. In addition, the final rules that make it mandatory for all DCMs (covered and non-covered), SEFs, and SDRs to follow best practices, ensure testing independence, and coordinate BC–DR plans will also impose new costs. As discussed more fully below in Section C.3.b., the language in the final rules make these currently recommended provisions mandatory and the Commission believes this modification will result in new costs relative to current practice. Finally, the Commission believes that the final rules requiring all DCMs (covered and non-covered), SEFs, and SDRs to update BC–DR plans and emergency procedures no less frequently than annually, and the requirement for all DCMs to report their total annual trading volume to the Commission each year will also impose new costs relative to the current requirements.

The Commission expects that the costs and benefits may vary somewhat among the covered DCMs and SDRs. For example, some covered DCMs and SDRs are larger or more complex than others, and the new requirements may impact covered DCMs and SDRs differently depending on their size and the complexity of their systems.[149] The Commission believes that it is not possible to precisely estimate the additional costs for covered DCMs and SDRs that may be incurred as a result of this rulemaking, as the actual costs will be dependent on the operations and staffing of the particular covered DCM and SDR, and to some degree, the manner how they choose to implement compliance with the new requirements.

While certain costs are amenable to quantification, other costs are not easily estimated, such as the costs to the public or market participants in the event of a cybersecurity incident at a DCM, SEF, or SDR. The public interest is served by these critical infrastructures performing their functions. The final regulations are intended to mitigate the frequency and severity of system security breaches or functional failures, and therefore, provide an important if unquantifiable benefit to the public interest.

The discussion of costs and benefits that follows begins with a summary of each final rule and a consideration of the corresponding costs and benefits and the associated comments. At the conclusion of this discussion, the Commission considers the costs and benefits of the rules collectively in light of the five factors set forth in section 15(a) of the CEA.

3. Summary of Final Rules and Discussion of Costs and Benefits

a. Categories of Risk Analysis and Oversight: §§ 38.1051(a), 37.1401(a), and 49.24(b)

(1) Summary of Final Rules

The final rules concerning the categories of risk analysis and oversight clarify what is already required of all DCMs, SEFs, and SDRs regarding the categories which their programs of risk analysis and oversight must address by further defining the six categories addressed by the current rules. The six categories are: (1) Information security; (2) Business-continuity disaster recovery planning and resources; (3) Capacity and performance planning; (4) Systems operations; (5) Systems development and quality assurance; and (6) Physical security and environmental controls. In addition, the final rules add and define enterprise risk management as a seventh category.

(2) Costs and Discussion of Comments

MGEX stated that because the categories of risk analysis and oversight identified by the Commission in the DCM, SEF, and SDR NPRM differ from the Commission's parallel DCO NPRM, the lack of consistency increases the compliance burden of a combined DCM and DCO entity. The Commission acknowledges that its DCM, SEF, and SDR NPRM included the additional category of enterprise risk management and governance.[150]

MGEX also argued that because the two NPRMs differ on the component parts of a program of risk analysis and oversight, it is difficult to conclude that these programs are pre-existing requirements that do not have a cost of compliance. The Commission disagrees with MGEX. As noted in the DCO NPRM, DCO's face a wider array of risks than DCMs, and therefore enterprise risk management requirements for DCOs are not limited to the system safeguards context, but need to be addressed in a more comprehensive fashion and possibly in a future rulemaking.[151] The requirement for DCMs, SEFs, and SDRs to have a program of system safeguards risk analysis and oversight was mandated by Congress in the CEA itself, and thus is already required by law.[152] The Commission's current system safeguards regulations define the program of risk analysis and oversight by specifying the categories of risk analysis and oversight which the program must address. The category of enterprise risk management and governance is implicit and inherent in the statutory requirement itself, and supported by generally accepted standards and best practices.[153] The final rules make enterprise risk management and governance an explicitly listed category for the sake of clarity. If compliance with the clarifications regarding the categories of risk analysis and oversight results in additional costs, the Commission believes that those are costs associated with compliance with current requirements, not the final rules.

MGEX further argued that the specific and itemized content of some of the categories of risk analysis and oversight are overly prescriptive and should be principles based. MGEX noted information security controls as one example that is overly prescriptive. The Commission agrees with MGEX that the categories of risk analysis and oversight should be principles based, but disagrees with MGEX's assertion that the NPRM lists of topics included in each category consist of a static list of controls. As set out in detail in the NPRM, each of the aspects of the various categories that the program of risk analysis and oversight must address is rooted in generally accepted standards and best practices.[154] Because the Commission's current system safeguards rules and guidance provide that DCMs, SEFs, and SDRs should follow generally accepted best practices and standards regarding system safeguards, these entities' programs of risk analysis and oversight should already be addressing each of the aspects included in the NPRM for each risk analysis and oversight category.[155]

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[149] Based on information obtained from the DMO Preliminary Survey and the Commission's system safeguard compliance program, the Commission understands that most large DCMs (that are likely to be covered DCMs) and SDRs currently conduct system safeguard testing at the minimum frequency for most of the tests required by the final rules. Additionally, the Commission understands that most large DCMs and SDRs currently engage independent contractors for the testing required by the final rules.

[150] 80 FR 80139, 80143 (Dec. 23, 2015).

[151] *Id.* at 80123.

[152] CEA section 5(d)(20)(A), 17 U.S.C. 7(d)(20).

[153] *See, e.g.,* NIST SP 800–39, Managing Information Security Risk: Organization, Mission, and Information System View (March 2011) ("NIST SP 800–39"), available at *http://csrc.nist.gov/publications/nistpubs/800-39/SP800-39-final.pdf.*

[154] 80 FR 80139, 80143 (Dec. 23, 2015).

[155] *See* § 38.1051(b) (for DCMs); Appendix A to Part 37, Core Principle 14 of Section 5h of the Act—System Safeguards (a) Guidance (1) Risk analysis and oversight program (for SEFs); § 49.24(c) (for SDRs).

CME requested that the Commission confirm that the final rule will allow regulated entities flexibility of organizational design concerning how their programs of risk analysis and oversight address enterprise risk management and governance, and will not require that an entity's enterprise risk management function conduct all components of this category. As discussed in the preamble, the Commission confirms that the addition of enterprise risk management and governance does not require that the listed elements of this category be conducted through a particular organizational structure; rather, the final rule provides flexibility in this regard.

(3) Benefits

The primary benefit of the final rules is clarity to all DCMs, SDRs, and SEFs with regard to administering their programs of risk analysis and oversight. The final rules provide definitions for each category of risk analysis and oversight and highlight important aspects of each category that are recognized as best practices. An important benefit of the adherence-to-best-practices approach taken in the Commission's final system safeguards rules is that best practices can evolve over time as the cybersecurity field evolves. In addition, the Commission believes that all seven categories of risk analysis and oversight are essential to maintaining effective system safeguards in today's cybersecurity threat environment.

b. Requirements To Follow Best Practices, Ensure Testing Independence, and Coordinate BC–DR Plans: §§ 38.1051(b), 37.1401(b), and 49.24(c) (best practices); 38.1051(h)(2)(iii), (3)(iii), (4)(ii), (5)(iii), and (7)(ii), 37.1401(h)(2)(iii), (3)(ii), (4)(ii), (5)(ii), and (7)(ii), and 49.24(2)(iii), (4)(ii), and (7)(ii) (testing independence); 38.1051(i), 37.1401(i), and 49.24(k) (BC–DR plans)

(1) Summary of Final Rules

The final rules make mandatory for DCMs, SEFs, and SDRs the provisions concerning best practices, testing independence, and coordination of BC–DR plans recommended but not made mandatory in the Commission's current rules.

(2) Costs

The Commission did not receive any comments addressing the costs of these provisions. The Commission's current rules for DCMs and SDRs, and its guidance for SEFs, provide that such entities should follow best practices in addressing the categories which their programs of risk analysis and oversight are required to include.[156] The current rules and guidance also provide that such entities should ensure that their system safeguards testing, whether conducted by contractors or employees, is conducted by independent professionals (persons not responsible for development or operation of the systems or capabilities being tested).[157] They further provide that such entities should coordinate their BC–DR plans with the BC–DR plans of market participants and essential service providers.[158] Because the final rules will make these currently recommended provisions mandatory, it is anticipated that they will impose new costs relative to current practice.

(3) Benefits

Making the provisions concerning following best practices, ensuring testing independence, and coordinating BC–DR plans mandatory will align the system safeguards rules for DCMs, SEFs, and SDRs with the Commission's system safeguards rules for DCOs, which already contain mandatory provisions in these respects. As stated in the preamble, the Commission believes that the requirement to follow generally accepted standards and best practices is one of the most important requirements of its system safeguards rules. Best practices can evolve over time, in light of the changing cybersecurity threat environment. The agility that a best practices approach provides is crucial to effective resilience with respect to cybersecurity and system safeguards. Further, the ongoing development and evolution of best practices benefits from private sector expertise and input, as well as from public sector contributions. Such private sector expertise and input is important to effective cybersecurity. The Commission also observes that requiring financial sector entities to follow best practices with respect to system safeguards and cybersecurity is an effective key to harmonizing the oversight of cybersecurity conducted by different financial regulators. The Commission also believes that clarity concerning what is required benefits DCMs, SEFs, and SDRs, and the public interest.

c. Updating of Business Continuity-Disaster Recovery Plans and Emergency Procedures: §§ 38.1051(c), 37.1401(c), and 49.24(d)

(1) Summary of Final Rules

The final rules require a DCM, SEF, or SDR to update its BC–DR plan and emergency procedures at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually.

(2) Costs

The Commission did not receive any comments addressing the costs of this aspect of the proposed rules. The Commission's current system safeguards rules provide that DCMs, SEFs, and SDRs must maintain BC–DR plans and emergency procedures, but do not specify a frequency in which such plans and procedures must be updated.[159] As a result of the minimum annual frequency requirement, the final rules impose new costs relative to the requirements of the current rules.[160] The entities will incur the additional recurring costs associated with investing in the resources and staff necessary to updating the BC–DR and emergency plans at least annually.

(3) Benefits

The Commission notes that updating BC–DR plans and emergency procedures at least annually is a generally accepted best practice, as it follows NIST and other standards. These standards highlight the importance of updating such plans and procedures at least annually to help enable the organization to better prepare for cyber security incidents. Specifically, the NIST standards provide that once an organization has developed a BC–DR plan, "the organization should implement the plan and review it at least annually to ensure the organization is following the roadmap for maturing the capability and fulfilling their [sic] goals for incident response." [161]

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[156] *See* § 38.1051(b) (for DCMs); Appendix A to Part 37, Core Principle 14 of Section 5h of the Act—System Safeguards (a) Guidance (1) Risk analysis and oversight program (for SEFs); § 49.24(c) (for SDRs).

[157] *See* § 38.1051(h) (for DCMs); Appendix A to Part 37, Core Principle 14 of Section 5h of the Act—System Safeguards (a) Guidance (2) Testing (for SEFs); § 49.24(j) (for SDRs).

[158] *See* § 38.1051(i) (for DCMs); Appendix A to Part 37, Core Principle 14 of Section 5h of the Act—System Safeguards (a) Guidance (3) Coordination (for SEFs); § 49.24(k) (for SDRs).

[159] Commission regulations §§ 38.1051(c) (for DCMs), 37.1401(b) (for SEFs), and 49.24(d) (for SDRs); 17 CFR 38.1051(c); 17 CFR 37.1401(b); 17 CFR 49.24(d).

[160] The Commission understands from conducting its oversight of DCMs, SEFs, and SDRs that many of these entities currently update their respective BC–DR plans and emergency procedures at least annually.

[161] NIST SP 800–53 Rev. 4, Physical and Environmental Protection (PE) control family, available at *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf;* FFIEC, Operations IT Examination Handbook, at 15–18, available at *http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_Operations.pdf.*

d. Required System Safeguards-Related Books and Records Obligations: §§ 38.1051(g), 37.1041(g), and 49.24(i)

(1) Summary of Final Rules

The final rules require a DCM, SEF, or SDR, in accordance with Commission regulation § 1.31,[162] to provide the Commission with the following system safeguards-related books and records promptly upon request of any Commission representative: (1) Current copies of the BC–DR plans and other emergency procedures; (2) all assessments of the entity's operational risks or system safeguards-related controls; (3) all reports concerning system safeguards testing and assessment required by this chapter, whether performed by independent contractors or employees of the DCM, SEF, or SDR; and (4) all other books and records requested by Commission staff in connection with Commission oversight of system safeguards pursuant to the Act or Commission regulations, or in connection with Commission maintenance of a current profile of the entity's automated systems.

(2) Costs and Discussion of Comments

The Commission believes that the final rules do not impose any new costs.[163] All DCMs, SEFs, and SDRs are already subject to system safeguard-related books and records requirements. The final rules clarify the system safeguard recordkeeping and reporting requirements for these registered entities. Because the final rules only clarify current requirements and because the production of system-safeguard records is already required by the current rules, the Commission believes that the final rules do not impose any additional costs on DCMs, SEFs, and SDRs.

Although the Commission did not receive any comments specifically addressing the costs of the books and records obligations, two commenters addressed whether, and in what circumstances, books and records obligations would reach the parent firm. ICE commented that with respect to parent firms that own both CFTC-regulated and non-CFTC-regulated entities, the Commission should avoid requiring production of documents discussing risks at the firm-wide level. To this end, ICE argued that the Commission should limit its production requests to documents focused solely on the risks of CFTC-regulated entities. However, WMBAA observed that the automated systems, programs of system safeguards-related risk analysis and oversight, cybersecurity defenses and testing, and BC–DR plans and resources of CFTC-regulated DCMs, SEFs, and SDRs owned by parent financial sector companies that also own entities not regulated by the Commission are frequently shared across the parent company. The Commission agrees with WMBAA's comment, and notes that this is presently the case with respect to all DCMs, SEFs, and SDRs regulated by the Commission that are owned by the same parent company. Thus, the Commission disagrees with ICE's suggestion that production of books and records addressing parent-wide system safeguards risks and risk analysis and oversight programs should not be required. A system safeguards document that is a book and record of a DCM, SEF, or SDR is required to be produced as a book and record subject to the Commission's rules, regardless of whether the parent company decides to share resources among CFTC regulated and non-CFTC regulated entities. The production of all of the books and records specified in the NPRM books and records provisions is already required by the Act and Commission regulations.[164]

(3) Benefits

The recordkeeping requirements for DCMs, SEFs, and SDRs allow the Commission to effectively monitor a DCM's, SEF's, or SDR's system safeguards program and compliance with the Act and the Commission's regulations. In addition, such requirements enable Commission staff to perform examinations of DCMs, SEFs, and SDRs, and identify practices that may be inconsistent with the Act and Commission regulations. Further, making all system safeguard-related documents available to the Commission upon request informs the Commission of areas of potential weaknesses, or persistent or recurring problems, across DCMs, SEFs, and SDRs.

e. Definitions: §§ 38.1051(h)(1), 37.1041(h)(1), and 49.24(j)(1)

(1) Summary of Final Rules

The final rules include definitions for the following terms: (1) Controls; (2) controls testing; (3) enterprise technology risk assessment; (4) external penetration testing; (5) internal penetration testing; (6) key controls; (7) security incident; (8) security incident response plan; (9) security incident response plan testing; and (10) vulnerability testing. Additionally, § 38.105(h)(1) includes the definition for covered DCM.

(2) Costs and Benefits

The definitions specified in the final rules provide context to the specific system safeguard tests and assessments that a DCM, SEF, or SDR is required to conduct on an ongoing basis. Accordingly, the costs and benefits of these terms are attributable to the substantive testing requirements and are discussed in the cost and benefit considerations related to the final rules describing the requirements for each test. However, the Commission notes that some comments addressed terms that were used but not defined in the NPRM and are relevant to the consideration of costs for the final rules. In particular, as discussed in the preamble, CME, ICE, and MGEX commented concerning the NPRM's use of the terms "independent contractor" and "independent professional." CME asserted that neither term is clearly defined in either the Commission's existing rules or the NPRM. ICE called on the Commission to clarify in the final rule that entity employee groups such as the internal audit function are considered to be independent professionals not responsible for the development of operation of the systems or capabilities tested or assessed in the area of system safeguards. ICE stated that not allowing internal auditors to conduct certain system safeguards or information security testing could add substantial costs to the regulated entities. While not commenting directly on these definitions, MGEX expressed the view that having independent testing performed is a key and costly feature proposed in the NPRM.

The Commission's current system safeguards rules for DCMs and SDRs and its current system safeguards rules and guidance for SEFs provide that independent contractors are qualified system safeguards professionals who are not employees of the DCM, SEF, or SDR.[165] The current rules use the terms independent contractor and employee as they are legally defined and generally used.[166] The Commission believes that the distinction between independent contractor and employee is well settled and understood, and does not need additional definition in the system safeguards rules. With respect to system safeguards testing, the current rules provide that employees conducting required testing must be independent in that they are not employees responsible for development or operation of the systems or capabilities being tested. The Commission believes that this distinction between employees with sufficient independence to appropriately conduct required system safeguards testing and those who lack such independence is also sufficiently clear, and does not require additional definition. The NPRM used, and the final rule will retain, this language from the current system safeguards rules. Where this requirement is included, the testing in question must be conducted by employees who are independent, which means employees not responsible for developing or operating what is being tested. Employees who are part of the internal audit function of a DCM, SEF, or SDR, are one example of employees having appropriate independence. Other employees who possess the specified degree of independence and have qualifications the DCM, SEF, or SDR believes are appropriate may also be suitable in such cases.

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[162] Commission regulation § 1.31(a)(1) specifically provides that all books and records required to be kept by the Act or by the regulation shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice. *See* 17 CFR 1.31(a)(1).

[163] *See also* PRA discussion above.

[164] 80 FR 80139, 80147 (Dec. 23, 2015).

[165] 17 CFR §§ 38.1051(h) (for DCMs); 37.1401(g) and Appendix B to Part 37, Core Principle 14 of Section 5h of the Act—System Safeguards (C)(a)(2) (for SEFs); 49.24(j) (for SDRs).

[166] *See, e.g.,* Black's Law Dictionary, Tenth Ed. (Thomson Reuters, St. Paul, MN, 2014) ("Employee. Someone who works in the service of another

As discussed in the preamble, one clarification may be helpful with respect to testing required to be performed by independent contractors, as distinct from testing performed by persons performing the internal audit function. The internal audit function is a required aspect of the enterprise risk management governance category which must be included in the program of risk analysis and oversight that a DCM, SEF, or SDR must maintain. It is an integral part of, and a responsibility of, the regulated entity, whether carried out in-house or outsourced. The NPRM proposed required testing by independent contractors in part to give the Commission' system safeguards oversight a third source of system safeguards information on which to rely, in addition to the entity's employees and its internal audit function.[167] It also proposed independent contractor testing to give the regulated entity the benefit of a truly outside perspective concerning system safeguards, not colored by beginning from the institutional point of view. Accordingly, testing performed by persons executing internal audit function will not fulfill the requirement for testing by independent contractors, whether it is performed by employees executing the internal audit function or by internal audit contractors to whom a DCM, SEF, or SDR outsources part or all of its internal audit function.

f. Vulnerability Testing: §§ 38.1051(h)(2), 37.1401(h)(2), and 49.24(j)(2)

(1) Summary of Final Rules

The final rules define vulnerability testing as testing of a DCM's, SEF's, or SDR's automated systems to determine what information may be discoverable through a reconnaissance analysis of those systems and what vulnerabilities may be present on those systems. Additionally, the final rules require a DCM, SEF, or SDR to conduct vulnerability testing that is sufficient to satisfy the testing scope requirements in new §§ 38.1051(k), 37.1401(k), and 49.24(l), at a frequency determined by an appropriate risk analysis. Moreover, such vulnerability testing shall include automated vulnerability scanning and follow best practices in this regard. At a minimum, covered DCMs and SDRs are required to conduct vulnerability testing no less frequently than quarterly. For all DCMs, SEFs, and SDRs, vulnerability testing may be conducted by either independent contractors or employees of the entity that are not responsible for development or operation of the systems or capabilities being tested.

(2) Costs and Discussion of Comments

(a) Vulnerability Testing Requirement for All DCMs, SEFs, and SDRs

As stated in the NPRM and above in the Baseline discussion, the Act requires each DCM, SEF, and SDR to develop and maintain a program of system safeguards-related risk analysis and oversight to identify and minimize sources of operational risk.[168] The Act mandates that in this connection each DCM, SEF, and SDR must develop and maintain automated systems that are reliable, secure, and have adequate scalable capacity, and must ensure system reliability, security, and capacity through appropriate controls and procedures.[169]

The Commission's current system safeguards rules for DCMs, SEFs, and SDRs mandate that, in order to achieve these statutory requirements, each DCM, SEF, and SDR must conduct testing and review sufficient to ensure that its automated systems are reliable, secure, and have adequate scalable capacity.[170] The Commission believes, as the generally accepted standards and best practices noted in the NPRM make clear, that it is essentially impossible for a DCM, SEF, or SDR to fulfill its current obligation to conduct testing sufficient to ensure the reliability, security, and capacity of its automated systems without conducting vulnerability testing.[171] If compliance with the current testing requirements as clarified by the final rules results in costs to a DCM, SEF, or SDR beyond those it already incurs in this connection, the Commission believes that such additional costs are attributable to compliance with the current rules and not to the final rules. Accordingly, the Commission believes that clarifying the rules will not impose any new costs for DCMs, SEFs, and SDRs.

(b) Authenticated Scanning Requirement for All DCMs, SEFs, and SDRs

The NPRM called for vulnerability testing to include automated vulnerability scanning, conducted on an authenticated basis where indicated by appropriate risk analysis, with compensating controls where scanning is conducted on an unauthenticated basis.[172] No commenters disagreed with the proposed requirement for vulnerability testing to include automated vulnerability scanning. ICE argued that the Commission should remove the authenticated vulnerability scanning requirement from vulnerability testing because such scanning increases the quantity of findings, potentially diluting and obscuring important results. Additionally, ICE stated that introducing authentication increases the cost and time of a scan and increases risk by requiring an operating system login to be created and maintained on a new system. In light of the possibility that the proposed requirement for

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person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.") ("Independent Contractor. Someone who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it.")

[167] 80 FR 80139, 80148 (Dec. 23, 2015).

[168] 80 FR 80139, 80164, 80167 (Dec. 23, 2015). CEA section 5(d)(20) (for DCMs); CEA section 5h(f)(14) (for SEFs); CEA section 21(f)(4)(A) and 17 CFR 49.24(a) (for SDRs).

[169] *Id.*

[170] Commission regulations §§ 38.1051(h) (for DCMs), 37.1401(g) (for SEFs), and 49.24(j) (for SDRs). 17 CFR 38.1051(h); 17 CFR 37.1401(g); and 17 CFR 49.24(j).

[171] 80 FR 80139, 80164 (Dec. 23, 2015). *See, e.g.,* NIST SP 800–53A Rev. 1, at F67, June 2010, available at *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf;* and NIST SP 800–115, Technical Guide to Information Security Testing and Assessment, at 5–2, September 2008, available at *http://csrc.nist.gov/publications/nistpubs/800-115/SP800-115.pdf.*

[172] *Id.* at 80150.

automated scanning to include authenticated scanning could increase costs, burdens, and risks while having limited utility for DCMs, SEFs, and SDRs, the Commission is removing the authenticated scanning requirement from the final rules. Instead, the final rules provide that automated vulnerability scanning shall follow best practices.[173] The Commission believes that removal of the authenticated scanning requirement will reduce the costs of compliance where best practices do not require authenticated scanning.

(c) Vulnerability Testing Frequency Requirement for Covered DCMs and SDRs

The final rules require covered DCMs and SDRs to conduct vulnerability testing no less frequently than quarterly.[174] The Commission's current rules require DCMs and SDRs to conduct regular, periodic, objective testing of their automated systems.[175] Accordingly, the final rules will impose new costs relative to the requirements of the current rules.[176] MGEX stated that the frequency of conducting vulnerability testing should be determined by the regulatees and avoid prescriptive, static requirements.[177] ICE argued that regulatees should not be subject to a formal risk assessment to potentially determine a higher vulnerability testing frequency. The Commission notes that the minimum frequency requirement is supported by generally accepted standards and best practices.[178] Therefore, the Commission disagrees with the suggestion that the frequency of such testing should be left to the entities themselves. Accordingly, the Commission also notes that the final rule requires all DCMs, SEFs, and SDRs to conduct such testing as frequently as indicated by appropriate risk analysis.

(d) Independent Contractor Requirement for Covered DCMs and SDRs

The NPRM called for covered DCMs and SDRs to engage independent contractors to conduct two of the quarterly vulnerability tests each year.[179] As explained in the preamble, a number of commenters argued that the use of independent contractors for vulnerability testing could undesirably increase risks. The Commission agrees with the commenters and the final rules do not include the requirement for covered DCMs and SDRs to have some vulnerability testing conducted by independent contractors. Instead, the final rules provide these entities with the flexibility to engage either independent contractors or use entity employees who are not responsible for the development or operation of the systems or capabilities being tested. The Commission believes that this will reduce costs and burdens for all covered DCMs and SDRs.[180]

(e) Cost Estimates for Covered DCMs and SDRs

The Commission did not receive comments addressing the total costs for conducting vulnerability testing. As discussed above in the costs section concerning the minimum frequency requirement, the final rules will impose new costs on covered DCMs and SDRs. The data collected from the DMO Preliminary Survey, suggests that on average, a covered DCM or SDR currently spends approximately $3,495,000 annually on vulnerability testing. As stated in the NPRM, the Commission recognizes that the actual costs may vary widely as a result of numerous factors including, the size of the organization, the complexity of the automated systems, and the scope of the test.[181] Additionally, although the Commission believes that all covered DCMs and SDRs have policies and procedures in place for vulnerability testing, the Commission acknowledges that affected entities may need to dedicate time to reviewing and revising their current policies and procedures to ensure that they are sufficient in the context of the final rules. The Commission believes that any costs incurred by the entities as result of such review will be minor.

(3) Benefits

Vulnerability testing identifies, ranks, and reports vulnerabilities that, if exploited, may result in an intentional or unintentional compromise of a system.[182] The complex analysis and plan preparation that a DCM, SEF, or SDR undertakes to complete vulnerability testing, including designing and implementing changes to existing plans, are likely to contribute to a better understanding by management of the challenges the entity might face in a cyber threat scenario. In turn, the entity will be better prepared to address those challenges. Improved preparation helps reduce the possibility of market disruptions. Regularly conducting vulnerability tests enables a DCM, SEF, or SDR to mitigate the impact that a cyber threat to, or a disruption of, the entity's operations would have on market participants, and more broadly, the stability of the U.S. financial markets. Accordingly, the Commission believes that such testing strengthens a DCM's, SEF's, and SDR's automated systems, thereby protecting market participants and swaps data reporting parties from a disruption in services.

With respect to the minimum frequency requirement for covered DCMs and SDRs, the Commission believes that such entities have a significant incentive to conduct vulnerability testing at least quarterly in order to identify the latest threats to the organization and reduce the likelihood that attackers could exploit vulnerabilities. Best practices also support the requirement that vulnerability testing be conducted no less frequently than quarterly. For example, PCI DSS standards provide that entities should run internal and external network vulnerability scans "at least quarterly," as well as after any significant network changes, new system component installations, firewall modifications, or product upgrades.[183] Moreover, the Commission believes that the minimum frequency requirement provides additional clarity to covered DCMs and SDRs concerning what is required in this respect. As noted above in the costs section for this provision, the final rules also provide flexibility for DCMs, SEFs, and SDRs to have vulnerability testing conducted by either independent contractors or entity employees who are not responsible for development or operation of the systems or capabilities being tested.

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[173] To the extent that best practices require or come to require authenticated scanning, such scanning would be mandatory pursuant to the requirement to follow best practices, and would be addressed in system safeguards examinations.

[174] Based on the information collected in the DMO Preliminary Survey, the Commission understands that most large DCMs and SDRs currently conduct vulnerability testing at least quarterly.

[175] *See* Commission regulations §§ 38.1051(h) (for DCMs) and 49.24(j) (for SDRs); 17 CFR 38.1051(h); 17 CFR 49.24(j).

[176] As stated in the NPRM, the Commission's current system safeguards rules provide that all DCMs must conduct testing to ensure the reliability, security, and capacity of their automated systems, and thus, to conduct vulnerability testing, external and internal penetration testing, controls testing, enterprise technology risk assessments, and to have and test security incident response plans in a way governed by appropriate risk analysis. The proposed rules avoided applying the addition minimum frequency requirements to non-covered DCMs, in order to give smaller DCMs with fewer resources additional flexibility regarding the testing they must conduct. 80 FR 80168 (Dec. 23, 2015). For purposes of the final rules, the Commission continues to believe that such a reduced burden for smaller DCMs is appropriate.

[177] MGEX also commented that a smaller entity, such as MGEX, that is a combined DCM and DCO would not be able to take advantage of the reasonable carve-out for non-covered DCMs, because it would have to meet the highest common denominator of the DCM and DCO rulemakings. As stated in the Commission's parallel DCO rulemaking, the Commission has worked to harmonize the regulations applicable to DCOs and DCMs and the regulations track each other very closely. To the extent that an entity operating as a non-covered DCM incurs additional costs as a result of operating a DCO that must comply with the minimum frequency and independent contractor requirements, such costs are attributable to the final DCO regulations.

[178] PCI DSS, Requirement 11.2 Regularly test security systems and processes, at 51, available at *https://www.pcisecuritystandards.org/documents/navigating_dss_v20.pdf*.

[179] *Id.* at 80150.

[180] CME commented that the NPRM's independent contractor requirements that apply to vulnerability testing will result in an additional cost of $1.1 million every two years.

[181] *Id.* at 80168.

[182] *See* Security Standards Council, *PCI–DSS Information Supplement: Penetration Testing Guidance*, p. 3, available at: *https://www.pcisecuritystandards.org/documents/Penetration_Testing_Guidance_March_2015.pdf*.

g. External Penetration Testing: §§ 38.1051(h)(3), 37.1401(h)(3), and 49.24(j)(3)

(1) Summary of Final Rules

The final rules define external penetration testing as attempts to penetrate a DCM's, SEF's or SDR's automated systems from outside the systems' boundaries to identify and exploit vulnerabilities. Additionally, the final rules require a DCM, SEF, or SDR to conduct external penetration testing that is sufficient to satisfy the scope requirements in new §§ 38.1051(k), 37.1401(k), and 49.24(l), at a frequency determined by an appropriate risk analysis. At a minimum, covered DCMs and SDRs are required to conduct external penetration testing no less frequently than annually. Covered DCMs and SDRs also are required to engage independent contractors to perform the required annual external penetration test, although the entity could have other external penetration testing conducted by employees who are not responsible for development or operation of the systems or capabilities being tested.

(2) Costs and Discussion of Comments

(a) External Penetration Testing for All DCMs, SEFs, and SDRs

As stated in the NPRM and above in the Baseline discussion, the Act requires each DCM, SEF, and SDR to develop and maintain a program of system safeguards-related risk analysis and oversight to identify and minimize sources of operational risk.[184] The Act mandates that in this connection each DCM, SEF, and SDR must develop and maintain automated systems that are reliable, secure, and have adequate scalable capacity, and must ensure system reliability, security, and capacity through appropriate controls and procedures.[185]

The Commission's current system safeguards rules for DCMs, SEFs, and SDRs mandate that, in order to achieve these statutory requirements, each DCM, SEF, and SDR must conduct testing and review sufficient to ensure that its automated systems are reliable, secure, and have adequate scalable capacity.[186] The Commission believes, as the generally accepted standards and best practices noted in the NPRM make clear, that it is essentially impossible for a DCM, SEF, or SDR to fulfill its current obligation to conduct testing sufficient to ensure the reliability, security, and capacity of its automated systems without conducting external penetration testing.[187] If compliance with the current testing requirements as clarified by the final rules results in costs to a DCM, SEF, or SDR beyond those it already incurs in this connection, the Commission believes that such additional costs are attributable to compliance with the current rules and not to the final rules. Accordingly, the Commission believes that clarifying the rules will not impose any new costs for DCMs, SEFs, and SDRs.

(b) External Penetration Testing Frequency Requirement for Covered DCMs and SDRs

The final rules require covered DCMs and SDRs to conduct external penetration testing no less frequently than annually. The Commission's current rules require DCMs and SDRs to conduct regular, periodic, objective testing of their automated systems.[188] Because the current rules do not specify the frequency of such testing, the final rules will impose new costs relative to the requirements of the current rules.[189] MGEX commented that the frequency of conducting external penetration testing should be left up to the organizations themselves. The Commission notes that external penetration testing is supported by generally accepted standards and best practices, which make it clear that testing at least annually is essential to adequate system safeguards in today's cybersecurity environment.[190] Therefore, the Commission disagrees with the suggestion that the frequency should be left to the determination of the entities themselves. Accordingly, the Commission also notes that the final rule requires all DCMs, SEFs, and SDRs to conduct such testing as frequently as indicated by appropriate risk analysis.

(c) Independent Contractor Requirement for Covered DCMs and SDRs

The final rules also require that the annual external penetration test conducted by a covered DCM or SDR be conducted by an independent contractor. Current Commission regulations §§ 38.1051(h) and 49.24(j) provide that testing of automated systems should be conducted by qualified, independent professionals.[191] The qualified independent professionals may be independent contractors or employees of a DCM or SDR as long as they are not responsible for development or operation of the systems or capabilities being tested. Therefore, the final rules will impose new costs relative to the requirements of the current rules.[192]

DDR commented generally that an SDR should have flexibility regarding whether to have testing conducted by independent contractors or employees not responsible for the development or operation of the systems or capabilities being tested, based on the risks of that SDR. The Commission disagrees with DDR's comment. As discussed more fully in the preamble and noted below in the benefits section related to this provision, the Commission believes that the independent viewpoint and approach provided by independent contractors, who can conduct a penetration test from the perspective of an outside adversary uncolored by insider assumptions or blind spots, will benefit covered DCM and SDR programs of risk analysis and oversight. The Commission also notes that best practices support using independent contractors.[193]

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[183] PCI DSS, Requirement 11.2 *Regularly test security systems and processes,* at 51, available at *https://www.pcisecuritystandards.org/documents/navigating_dss_v20.pdf.*

[184] 80 FR 80139, 80164, 80169 (Dec. 23, 2015). CEA section 5(d)(20) (for DCMs); CEA section 5h(f)(14) (for SEFs); CEA section 21(f)(4)(A) and 17 CFR 49.24(a) (for SDRs).

[185] *Id.*

[186] Commission regulations §§ 38.1051(h) (for DCMs), 37.1401(g) (for SEFs), and 49.24(j) (for SDRs). 17 CFR 38.1051(h); 17 CFR 37.1401(g); and 17 CFR 49.24(j).

[187] 80 FR 80139, 80164 (Dec. 23, 2015). *See, e.g.,* NIST Special Publication ("SP") 800–53A, Rev. 1, at E1, June 2010, available at: *http://csc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf;* and NIST 800–115, at 4–4, September 2008, available at: *http://csrc.nist.gov/publications/nistpubs/800-115/SP800-115.pdf.*

[188] *See* Commission regulations §§ 38.1051(h) (for DCMs) and 49.24(j) (for SDRs); 17 CFR 38.1051(h); 17 CFR 49.24(j).

[189] Based on the information collected in the DMO Preliminary Survey, the Commission understands that most large DCMs and SDRs currently conduct external penetration testing at the minimum frequency specified in the final rule.

[190] NIST, SP 800–115, Technical Guide to Information Security Testing and Assessment, Section 5.2.2, at 5–5, available at *http://csrc.nist.gov/publications/nistpubs/800-115/SP800-115.pdf.*

[191] *Id.*

[192] Based on the information collected in the DMO Preliminary Survey, the Commission understands that most large DCMs and SDRs currently engage independent contractors to conduct external penetration testing.

(d) Cost Estimates for Covered DCMs and SDRs

The Commission did not receive any comments addressing the total costs for conducting external penetration testing. CME, however, estimated that the independent contractor requirements in the Proposal, which apply to external penetration testing, will result in an additional cost of $1.1 million every two years. The data collected from the DMO Preliminary Survey suggests that on average a covered DCM or SDR spends approximately $244,625 annually on external penetration testing. The Commission recognizes that the actual costs may vary widely as a result of many factors, including the size of the organization, the complexity of the automated systems, and the scope of the test. Where a covered DCM or SDR does not currently use an independent contractor to conduct the external penetration test, the Commission expects that such entities may incur some additional minor costs as a result of the need to establish and implement internal policies and procedures that are reasonably designed to address the workflow associated with the test. For example, the Commission expects that such policies and procedures may include communication and cooperation between the entity and independent contractor, communication and cooperation between the entity's legal, business, technology, and compliance departments, appropriate authorization to remediate vulnerabilities identified by the independent contractor, implementation of the measures to address such vulnerabilities, and verification that these measures are effective and appropriate. Covered DCMs and SDRs that currently do not use independent contractors for the external penetration test may also need to dedicate time to reviewing and revising their current policies and procedures to ensure that they are sufficient in the context of the new requirements. The Commission believes that any costs incurred by the entities as result of such review will be minor.

(3) Benefits

External penetration testing benefits DCMs, SEFs, and SDRs by identifying the extent to which their systems can be compromised before an attack is identified.[194] Such testing is conducted from outside a DCM's, SEF's, or SDR's security perimeter to help reveal vulnerabilities that could be exploited by an external attacker. The Commission believes that external penetration testing strengthens DCM, SEF, and SDR systems, thereby protecting the entity and market participants from a disruption in services. A disruption in services at any of these entities could potentially disrupt the functioning of the broader financial markets.

The requirement for annual external penetration testing at covered DCMs and SDRs to be performed by an independent contractor is intended to ensure that these entities' system safeguards programs of risk analysis and oversight include the benefits provided when independent contractors perform such testing. The Commission believes that independent contractor testing has particular value with respect to external penetration testing because the test is conducted from the viewpoint of an outsider and against the current tactics, techniques, and threat vectors of current threat actors as revealed by current threat intelligence.

h. Internal Penetration Testing: §§ 38.1051(h)(4), 37.1401(h)(4), and 49.24(j)(4)

(1) Summary of Final Rules

The final rules define internal penetration testing as attempts to penetrate a DCM's, SEF's, or SDR's automated systems from inside the systems' boundaries to identify and exploit vulnerabilities. Additionally, the final rules require a DCM, SEF, or SDR to conduct internal penetration testing that is sufficient to satisfy the scope requirements in new §§ 38.1051(k), 37.1401(k), and 49.24(l), at a frequency determined by an appropriate risk analysis. At a minimum, covered DCMs and SDRs are required to conduct the internal penetration testing no less frequently than annually. All DCM, SEFs, or SDRs may engage independent contractors to conduct the test, or the entity may use employees of the entity who are not responsible for development or operation of the systems or capabilities being tested.

(2) Costs and Discussion of Comments

(a) Internal Penetration Testing for All DCMs, SEFs, and SDRs

As stated in the NPRM and above in the Baseline discussion, the Act requires each DCM, SEF, and SDR to develop and maintain a program of system safeguards-related risk analysis and oversight to identify and minimize sources of operational risk.[195] The Act mandates that in this connection each DCM, SEF, and SDR must develop and maintain automated systems that are reliable, secure, and have adequate scalable capacity, and must ensure system reliability, security, and capacity through appropriate controls and procedures.[196]

The Commission's current system safeguards rules for DCMs, SEFs, and SDRs mandate that, in order to achieve these statutory requirements, each DCM, SEF, and SDR must conduct testing and review sufficient to ensure that its automated systems are reliable, secure, and have adequate scalable capacity.[197] The Commission believes, as the generally accepted standards and best practices noted in the NPRM make clear, that it is essentially impossible for a DCM, SEF, or SDR to fulfill its current obligation to conduct testing sufficient to ensure the reliability, security, and capacity of its automated systems without conducting internal penetration testing.[198] If compliance with the current testing requirements as clarified by the final rules results in costs to a DCM, SEF, or SDR beyond those it already incurs in this connection, the Commission believes that such additional costs are attributable to compliance with the current rules and not to the final rules. Accordingly, the Commission believes that clarifying the rules will not impose any new costs for DCMs, SEFs, and SDRs.

(b) Internal Penetration Testing by Independent Contractors or Employees of the DCM, SEF, or SDR

The Commission continues to believe, as provided in the NPRM, that it is appropriate to give all DCMs, SEFs, and SDRs the flexibility of whether to have internal penetration testing performed by independent contractors or by employees not responsible for development or operation of the systems or capabilities tested.[199]

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[193] Council on CyberSecurity, CSC 20–1, available at *http://www.counciloncybersecurity.org/critical-controls/*.

[194] FFIEC, Information Security IT Examination Handbook, at 81, available at *http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_InformationSecurity.pdf*.

[195] 80 FR 80139, 80164, 80170 (Dec. 23, 2015). CEA section 5(d)(20) (for DCMs); CEA section 5h(f)(14) (for SEFs); CEA section 21(f)(4)(A) and 17 CFR 49.24(a) (for SDRs).

[196] *Id.*

[197] Commission regulations §§ 38.1051(h) (for DCMs), 37.1401(g) (for SEFs), and 49.24(j) (for SDRs). 17 CFR 38.1051(h); 17 CFR 37.1401(g); and 17 CFR 49.24(j).

[198] 80 FR 80139, 80164 (Dec. 23, 2015). *See, e.g.*, NIST Special Publication ("SP") 800–53A, Rev. 1, at E1, June 2010, available at: *http://csc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf*; and NIST 800–115, at 4–4, September 2008, available at: *http://csrc.nist.gov/publications/nistpubs/800-115/SP800-115.pdf*.

(c) Internal Penetration Testing Frequency Requirement for Covered DCMs and SDRs

The final rules require covered DCMs and SDRs to conduct internal penetration testing no less frequently than annually. The Commission's current rules require DCMs and SDRs to conduct regular, periodic, objective testing of their automated systems.[200] Because the current rules do not specify the frequency of such testing, the final rules will impose new costs.[201] CME commented that there is a scarcity of potential employees with the skill set required to conduct internal penetration testing without introducing risks into the production environment and other sensitive environments. For this reason, CME suggested making annual internal penetration testing an objective rather than a requirement, so that covered DCMs and SDRs can prioritize truly effective testing over less skilled testing done merely to check the annual requirement box. MGEX called for the final rule to leave the frequency of penetration testing to be determined by regulatees. The Commission notes that the minimum annual frequency requirement is supported by generally accepted standards and best practices, which make it clear that such testing at least annually is essential to adequate system safeguards in today's cybersecurity environment.[202] Thus, the Commission disagrees with the suggestions that annual internal penetration should be a mere objective, or that the frequency of such testing by covered DCMs and SDRs should be left to determination by those entities themselves. The Commission also notes that the final rule requires all DCMs, SEFs, and SDRs to conduct such testing as frequently as indicated by appropriate risk analysis.

(d) Cost Estimates for Covered DCMs and SDRs

The Commission did not receive comments addressing the total costs for conducting internal penetration testing. However, based on the data from the DMO Preliminary Survey, the Commission estimates that the current average cost for a covered DCM or SDR conducting internal penetration testing is approximately $410,625 annually. The Commission recognizes that the actual costs may vary significantly as a result of numerous factors, including the size of the organization, the complexity of the automated systems, and the scope of the test. The Commission also recognizes that large DCMs and SDRs may undertake an evaluation, on an initial and ongoing basis, regarding internal policies and procedures for internal penetration testing that may need to be revised. The Commission believes that these costs will be minor.

(3) Benefits

By attempting to penetrate a DCM's, SEF's or SDR's automated systems from inside the systems' boundaries, internal penetration tests allow the respective entities to assess system vulnerabilities from attackers that penetrate their perimeter defenses and from trusted insiders, such as former employees and contractors. In addition to being an industry best practice, the Commission believes that annual internal penetration testing is important because such potential attacks by trusted insiders generally pose a unique and substantial threat due to their more sophisticated understanding of a DCM's, SEF's, or SDR's systems. Moreover, "[a]n advanced persistent attack may involve an outsider gaining a progressively greater foothold in a firm's environment, effectively becoming an insider in the process. For this reason, it is important to perform penetration testing against both external and internal interfaces and systems." [203]

As discussed above in the costs section for this provision, the final rules address the required minimum frequency for covered DCMs and SDRs to perform internal penetration testing. Best practices support both external and internal penetration testing on at least an annual basis. NIST calls for at least annual penetration testing of an organization's network and systems.[204] The FFIEC calls for penetration testing of high risk systems at least annually, and for quarterly testing and verification of the efficacy of firewall and access control defenses.[205] Data security standards for the payment card industry provide that entities should perform both external and internal penetration testing "at least annually," as well as after any significant network changes, new system component installations, firewall modifications, or product upgrades.[206] The Commission believes the specified frequency levels will increase the likelihood that the affected entities will be adequately protected against the level of cybersecurity threat now affecting the financial sector.

i. Controls Testing: §§ 38.1051(h)(5), 37.1401(h)(5), and 49.24(j)(5)

(1) Summary of Final Rules

The final rules define controls testing as an assessment of the DCM's, SEF's, or SDR's market controls to determine whether such controls are implemented correctly, are operating as intended, and are enabling the entity to meet the system safeguard requirements established by the respective chapters. Additionally, the final rules require a DCM, SEF, or an SDR to conduct controls testing that is sufficient to satisfy the scope requirements in new §§ 38.1051(k), 37.1401(k), and 49.24(l), at a frequency determined by an appropriate risk analysis. Covered DCMs and SDRs are required to test the key controls in the entity's risk analysis and oversight no less frequently than every three years. Such testing may be conducted on a rolling basis over the course of the minimum three-year period or over a minimum period determined by an appropriate risk analysis, whichever is shorter. Covered DCMs and SDRs also are required to engage independent contractors to test and assess their key controls no less frequently than every three years. The entities may conduct any other controls testing by using either independent contractors or employees of the DCM or SDR who are not responsible for development or operation of the systems or capabilities being tested.

(2) Costs and Discussion of Comments

(a) Controls Testing for All DCMs, SEFs, and SDRs

As stated in the NPRM and above in the Baseline discussion, the Act requires each DCM, SEF, and SDR to develop and maintain a program of system safeguards-related risk analysis and oversight to identify and minimize sources of operational risk.[207] The Act mandates that in this connection each DCM, SEF, and SDR must develop and maintain automated systems that are reliable, secure, and have adequate scalable capacity, and must ensure system reliability, security, and capacity through appropriate controls and procedures.[208]

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[199] *Id.* at 80153.

[200] *See* Commission regulations §§ 38.1051(h) (for DCMs) and 49.24(j) (for SDRs); 17 CFR 38.1051(h); 17 CFR 49.24(j).

[201] Based on the information from the DMO Preliminary Survey, the Commission understands that most large DCMs and SDRs currently conduct internal penetration testing at the minimum frequency specified in the final rule.

[202] PCI DSS standards, at 96 through 97, available at *https://www.pcisecuritystandards.org/security_standards/index.php.*

[203] FINRA, Report on Cybersecurity Practices (February 2015), at 22, available at *https://www.finra.org/sites/default/files/p602363%20Report%20on%20Cybersecurity%20Practices_0.pdf.*

[204] NIST, SP 800–115, Technical Guide to Information Security Testing and Assessment, Section 5.2.2, at 5–5, available at *http://csrc.nist.gov/publications/nistpubs/800-115/SP800-115.pdf.*

[205] FFIEC, Information Security IT Examination Handbook, at 82, available at *http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_InformationSecurity.pdf.*

[206] PCI DSS, Requirements 11.3.1 and 11.3.2., available at *https://www.pcisecuritystandards.org/documents/PCI_DSS_v3-1.pdf.*

The Commission's current system safeguards rules for DCMs, SEFs, and SDRs mandate that, in order to achieve these statutory requirements, each DCM, SEF, and SDR must conduct testing and review sufficient to ensure that its automated systems are reliable, secure, and have adequate scalable capacity.[209] The Commission believes, as the generally accepted standards and best practices noted in the NPRM make clear, that it is essentially impossible for a DCM, SEF, or SDR to fulfill its current obligation to conduct testing sufficient to ensure the reliability, security, and capacity of its automated systems without conducting controls testing.[210] If compliance with the current testing requirements as clarified by the final rules results in costs to a DCM, SEF, or SDR beyond those it already incurs in this connection, the Commission believes that such additional costs are attributable to compliance with the current rules and not to the final rules. Accordingly, the Commission believes that clarifying the rules will not impose any new costs for DCMs, SEFs, and SDRs.

(b) Controls Testing Frequency Requirement for Covered DCMs and SDRs

The final rules require a covered DCM or SDR to test each key control included in its program of system safeguards-related risk analysis and oversight no less frequently than every three years rather than the two-year cycle proposed in the NPRM. The Commission's current rules require DCMs and SDRs to conduct regular, periodic, objective testing of their automated systems.[211] Therefore, the final rules will impose new costs relative to the requirements of the current rules.[212] CME commented that some less critical controls do not warrant testing on a two-year cycle, and cited best practices permitting controls testing on a three-year cycle. CME suggested that the final rule should call for the minimum controls testing frequency for covered DCMs and SDRs to be determined by risk analysis (as the NPRM proposed for non-covered DCMs and SEFs), or alternatively that a minimum frequency cycle of three years would be a reasonable alternative to the NPRM's proposed two-year cycle. CME also suggested that, while many organizations will implement a two-year schedule for at least the testing of key controls, either of CME's proposed alternatives would make controls testing more cost effective, and increase focus on the most critical controls. The Commission agrees that a three-year rather than two-year minimum controls testing frequency requirement for covered DCMs and SDRs may reduce costs and burdens, while providing beneficial flexibility in overall controls testing program design and still ensuring that the fundamental purposes of the CEA and the Commission's system safeguards rules are achieved.

(c) Independent Contractor Requirement for Covered DCMs and SDRs

The final rules also require a DCM or SDR to engage an independent contractor to test and assess the key controls no less frequently than every three years. Current Commission regulations §§ 38.1051(h) and 49.24(j) provide that testing of automated systems should be conducted by qualified, independent professionals. The qualified independent professionals may be independent contractors or employees of a DCM or SDR as long as they are not responsible for development or operation of the systems or capabilities being tested. Accordingly, the final rules will impose new costs relative to the requirements of the current rules.[213] CME commented that, while independent contractor controls testing may be beneficial, the final rule should not exclude controls testing by independent employees, such as internal audit staff. DDR also commented that, where the NPRM proposed to require independent contractor testing, the final rule should give flexibility to use either independent contractors or independent employees. ICE suggested that the final rule should not require key controls testing, by independent contractors or otherwise, because it imposes a large burden for little or no practical improvement in security. The Commission notes that generally accepted standards and best practices call for key controls testing by independent contractors.[214] Therefore, the Commission disagrees with comments suggesting that the final rule should not require testing of key controls by independent contractors. Independent contractor testing of key controls will strengthen Commission oversight of system safeguards by providing an important, credible third source of information concerning crucial safeguards in addition to what is available from covered DCM or SDR staff and from the internal audit function of those entities. While the Commission recognizes that covered DCMs and SDRs will incur additional costs to engage independent contractors, the Commission believes that extending the minimum testing frequency for such testing by independent contractors from two to three years will reduce costs and burdens.

(d) Cost Estimates for Covered DCMs and SDRs

Based on the information from the DMO Preliminary Survey, the Commission estimates that the average cost for a covered DCM or SDR to conduct controls testing is approximately $2,724,000 annually.[215] As discussed above in the costs section concerning the minimum frequency and independent contractor requirements, the final rules will impose new costs on covered DCMs and SDRs. CME estimated that conducting controls testing in the manner proposed by the Commission will result in an additional cost of $5.6 million over a two-year period. However, the Commission believes that the modification of the minimum frequency requirement from two to three years will reduce costs and burdens. Consistent with all of the system safeguard-related tests required in the final rules, the Commission recognizes that the actual costs may vary widely as a result of numerous factors including, the size of the organization, the complexity of the automated systems, and the scope of the test. With respect to a covered DCM or SDR that does not currently use an independent contractor to conduct key controls testing, the Commission expects that these entities may incur some minor costs as a result of the need to establish and implement internal policies and procedures that are reasonably designed to address the workflow associated with the test. For example, the Commission expects that such policies and procedures may include the communication and cooperation between the entity and independent contractor; communication and cooperation between the entity's legal, business, technology, and compliance departments; appropriate authorization to remediate deficiencies identified by the independent contractor; implementation of the measures to address such deficiencies; and verification that these measures are effective and appropriate. While the Commission believes that all covered DCMs and SDRs have policies and procedures in place for controls testing conducted by internal staff, the Commission acknowledges that the affected entities may dedicate time in reviewing and revising their current policies and procedures to ensure that they are sufficient in the context of the new requirements. The Commission believes that any costs incurred by the entities as result of such review will be minor.

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[207] 80 FR 80139, 80164, 80172 (Dec. 23, 2015). CEA section 5(d)(20) (for DCMs); CEA section 5h(f)(14) (for SEFs); CEA section 21(f)(4)(A) and 17 CFR 49.24(a) (for SDRs).

[208] *Id.*

[209] Commission regulations §§ 38.1051(h) (for DCMs), 37.1401(g) (for SEFs), and 49.24(j) (for SDRs). 17 CFR 38.1051(h); 17 CFR 37.1401(g); and 17 CFR 49.24(j).

[210] 80 FR 80139, 80172 (Dec. 23, 2015). *See, e.g.*, NIST 800–53A, Rev. 1, at 13 and Appendix F1, June 2010, available at *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf.*

[211] *See* Commission regulations §§ 38.1051(h) (for DCMs) and 49.24(j) (for SDRs); 17 CFR 38.1051(h); 17 CFR 49.24(j).

[212] Based on the information collected in the DMO Preliminary Survey, the Commission understands that at least some of the large DCMs and SDRs currently conduct key controls testing at the frequency level specified in the final rule.

[213] Based on the information collected in the DMO Preliminary Survey, the Commission understands that most large DCMs and SDRs currently engage independent contractors to conduct key controls testing.

[214] NIST SP 800–53A Rev. 4, at 17–18, available at *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53Ar4.pdf.*

[215] One of the Cybersecurity Roundtable participants noted that with respect to the costs for a properly scoped program of controls testing there is no single answer to this question because it depends on the number of an organization's applications and the amount of money spent across the industry varies greatly. *See* CFTC Roundtable, at 258–59.

(3) Benefits

Controls testing is essential in determining risk to an organization's operations and assets, to individuals, to other organizations, and to the nation resulting from the use of the organization's systems.[216] In other words, controls testing is vital because it allows firms to be nimble in preventing, detecting, or recovering from an attack.[217] The Commission believes that the complex analysis and plan preparation that DCMs, SEFs, and SDRs undertake with respect to controls testing, including designing and implementing changes to existing plans, likely contributes to a better understanding by management of the challenges the entity would face in a cyber threat scenario. Consequently, these entities should be better prepared to meet these challenges. This improved preparation also would help reduce the possibility of market disruptions and financial losses to market participants. Moreover, regularly conducting controls testing enables DCMs, SEFs, and SDRs to mitigate the impact that a cyber threat to, or a disruption of, operations would have on market participants, and more broadly, the stability of the U.S. financial markets. Accordingly, the Commission believes that such testing strengthens DCMs, SEFs, and SDRs automated systems, thereby protecting market participants and swaps data reporting parties from a disruption in services.

As noted above in the costs section for this provision, the final rules require a covered DCM or SDR to test each key control included in its program of system safeguards-related risk analysis oversight no less frequently than every three years. The Commission believes that it is essential for each key control to be tested at least this often in order to confirm the continuing adequacy of the entity's system safeguards in today's cybersecurity threat environment. Additionally, the frequency requirement would benefit the affected entities by providing additional clarity concerning what is required of them in this respect. The final rules also permit such testing to be conducted on a rolling basis over the course of the three-year period or over a minimum period determined by an appropriate risk analysis, whichever is shorter. The rolling basis provision is designed to provide a covered DCM or SDR flexibility in conducting the key controls testing during the required minimum frequency period. This flexibility is intended to reduce burdens to the extent possible while still ensuring the needed minimum testing frequency. The Commission also notes that testing on a rolling basis is consistent with industry best practices.[218]

Additionally, the final rules require a covered DCM or SDR to engage independent contractors to test and assess each of the entity's key controls no less frequently than every three years. Independent testing of key controls is consistent with best practices. Significantly, the NIST Standards note the important benefits of independent testing and call for controls testing to include assessment by independent assessors, free from actual or perceived conflicts of interest, in order to validate the completeness, accuracy, integrity, and reliability of test results.[219] Accordingly, in light of best practices and the current cyber threat level to the financial sector, the Commission believes that the covered DCM and SDR independent contractor testing requirement for key controls would provide these substantial benefits.

j. Security Incident Response Plan Testing: §§ 38.1051(h)(6), 37.1401(h)(6), and 49.24(j)(6)

(1) Summary of Final Rules

The final rules define security incident response testing as testing of a DCM's, SEF's, or SDR's security incident plan to determine the plan's effectiveness, identifying its potential weaknesses or deficiencies, enabling regular plan updating and improvement, and maintaining organizational preparedness and resiliency with respect to security incidents. In addition, the methods of conducting security incident response plan testing may include checklist completion, walk-through or table-top exercises, simulations, and comprehensive exercises. The final rules require covered DCMs and SDRs to conduct such testing at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually. All DCMs, SEFs, and SDRs may conduct such testing by engaging either independent contractors or employees of the entity.

(2) Costs and Discussion of Comments

(a) Requirement To Maintain and Test a Security Incident Response Plan for All DCMs, SEFs, and SDRs

As stated in the NPRM and above in the Baseline discussion, the Act requires each DCM, SEF, and SDR to develop and maintain a program of system safeguards-related risk analysis and oversight to identify and minimize sources of operational risk.[220] The Act mandates that in this connection each DCM, SEF, and SDR must develop and maintain automated systems that are reliable, secure, and have adequate scalable capacity, and must ensure system reliability, security, and capacity through appropriate controls and procedures.[221]

The Commission's current system safeguards rules for DCMs, SEFs, and SDRs mandate that, in order to achieve these statutory requirements, each DCM, SEF, and SDR must conduct testing and review sufficient to ensure that its automated systems are reliable, secure, and have adequate scalable capacity.[222] The Commission believes, as the generally accepted standards and best practices noted in the NPRM make clear, that it is essentially impossible for a DCM, SEF, or SDR to fulfill its current obligation to conduct testing sufficient to ensure the reliability, security, and capacity of its automated systems without conducting security incident response plan testing.[223] If compliance with the current testing requirements as clarified by the final rules results in costs to a DCM, SEF, or SDR beyond those it already incurs in this connection, the Commission believes that such additional costs are attributable to compliance with the current rules and not to the final rules. Accordingly, the Commission believes that clarifying the rules will not impose any new costs for DCMs, SEFs, and SDRs.

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[216] NIST SP 800–53A, Assessing Security and Privacy Controls in Federal Information Systems and Organizations, rev. 4 ("NIST SP 800–53A"), p. 3, available at: *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53Ar4.pdf.*

[217] CFTC Roundtable, at 43–44.

[218] NIST SP 800–53A Rev. 4, at 17–18, available at *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53Ar4.pdf.*

[219] *Id.*

[220] 80 FR 80139, 80164, 80174 (Dec. 23, 2015). CEA section 5(d)(20) (for DCMs); CEA section 5h(f)(14) (for SEFs); CEA section 21(f)(4)(A) and 17 CFR 49.24(a) (for SDRs).

[221] *Id.*

As noted in the preamble, Tradeweb agreed that having a security incident response plan is essential to the functioning of a SEF, but suggested that the plan need only be reviewed annually and approved by an individual at the SEF in charge of information security. Tradeweb commented that requiring repeated testing of such plans is burdensome and unduly costly. The Commission disagrees with the suggestion that the requirement to test the security incident response plan should be reduced to mere annual review and approval of the plan by an employee responsible for information security. Best practices emphasize that security incident response plan testing is crucial to effective cyber incident response in today's cybersecurity environment.[224] The Commission notes that failure to practice the cyber incident response process can delay or paralyze timely response and cause severe consequences. While the Commission recognizes that security incident response testing will impose costs, these costs are attributable to the current requirements.

(b) Security Incident Response Plan Testing by Independent Contractors or Employees of the DCM, SEF, or SDR

The NPRM called for all DCMs, SEFs, and SDRs to have security incident response plan testing by either independent contractors or employees not responsible for development or operation of the systems or capabilities tested.[225] CME suggested that the Commission permit an independent employee responsible for incident response both design an organization's security incident response plan and be responsible for testing the plan. CME stated that this would allow an entity to leverage its employees with expertise in crisis and risk management and in incident response and planning, for both planning and testing purposes, in a way that is optimal for the entity's system safeguards. The Commission has considered CME's suggestion and believes that this could provide useful benefits and flexibility to all DCMs, SEFs, and SDRs, without impairing the purposes of the CEA and the Commission's regulations which security incident response plan testing is designed to advance. Accordingly, the final rules require security incident response plan testing by all DCMs, SEFs, and SDRs to be conducted by either independent contractors or entity employees, without restricting which employees may lead or conduct the testing.

(c) Security Incident Response Plan Testing Frequency Requirement for Covered DCMs and SDRs

The final rules require covered DCMs and SDRs to conduct security incident response plan testing at least annually. The Commission's current rules require DCMs and SDRs to conduct regular, periodic, objective testing of their automated systems.[226] Accordingly, the final rules will impose new costs relative to the requirements of the current rules. The Commission notes that annual security incident response plan testing is consistent with industry best practices.[227]

(d) Cost Estimates for Covered DCMs and SDRs

The Commission did not receive any comments addressing the costs of conducting security incident response plan testing for covered DCMs and SDRs. To the extent that the final rules impose additional costs on covered DCMs and SDRs, the Commission believes that such costs may vary widely as result of numerous factors, including the size of the organization, the complexity of its automated systems, and the scope of the test.[228] Additional costs incurred by the affected entities could include time in reviewing and revising current policies and procedures, initially and on an ongoing basis, concerning security incident response testing to ensure that they are sufficient in the context of the new requirements. In such cases, the Commission believes that any costs would be minimal.

(3) Benefits

Security incident response plans, and adequate testing of such plans, reduce the damage caused by breaches of a DCM's, SEF's, or SDR's network security. Network security breaches are highly likely to have a substantial negative impact on an entity's operations. They can increase costs through lost productivity, lost current and future market participation or swap data reporting, compliance penalties, and damage to the DCM's, SEF's, or SDR's reputation and brand. Moreover, the longer a cyber intrusion continues, the more its impact may be compounded.

The final rules provide clarity to covered DCMs and SDRs concerning the minimum testing frequency for security incident response plans. The Commission believes that the frequency requirement would increase the likelihood that these entities could mitigate the duration and impact in the event of a security incident by making them better prepared for such an incident. Therefore, a covered DCM or SDR may also be better positioned to reduce any potential impacts to its automated system operation, reliability, security, or capacity; or the availability, confidentiality, or integrity of its futures and swaps data.

k. Enterprise Technology Risk Assessment: §§ 38.1051(h)(7), 37.1401(h)(7), and 49.24(j)(7)

(1) Summary of Final Rules

The final rules define enterprise technology risk assessment as an assessment that includes an analysis of threats and vulnerabilities in the context of mitigating controls. In addition, the assessment identifies, estimates, and prioritizes risks to the entity's operations or assets, or to market participants, individuals, or other entities, resulting from impairment of the confidentiality, integrity, and availability of data and information or the reliability, security, or capacity of automated systems. The final rules require covered DCMs and SDRs to conduct an ETRA at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually. The final rules provide that all DCMs, SEFs, and SDRs may conduct ETRAs by using independent contractors, or employees of the entity who are not responsible for development or operation of the systems or capabilities being assessed.

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[222] Commission regulations §§ 38.1051(h) (for DCMs), 37.1401(g) (for SEFs), and 49.24(j) (for SDRs). 17 CFR 38.1051(h); 17 CFR 37.1401(g); and 17 CFR 49.24(j).

[223] 80 FR 80139, 80174 (Dec. 23, 2015). *See, e.g.*, NIST 800–53A, Rev. 1, at F148, June 2010, available at *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf.*

[224] NIST SP 800–84, Guide to Test, Training, and Exercise Programs for IT Plans and Capabilities, at 2–4 (citing NIST SP 800–53, Rev. 4, Security and Privacy Controls for Federal Information Systems and Organizations).

[225] *Id.* at 80157.

[226] *See* Commission regulations §§ 38.1051(h) (for DCMs) and 49.24(j) (for SDRs); 17 CFR 38.1051(h); 17 CFR 49.24(j).

[227] NIST SP 800–84, Guide to Test, Training, and Exercise Programs for IT Plans and Capabilities, at 2–4 (citing NIST SP 800–53, Rev. 4, Security and Privacy Controls for Federal Information Systems and Organizations).

[228] Based on the Commission's experience in administering the system safeguard compliance program, the Commission believes that many large DCMs and SDRs currently conduct security incident response plan testing at the minimum frequency specified in the final rule.

(2) Costs and Discussion of Comments

(a) ETRAs for All DCMs, SEFs, and SDRs

As stated in the NPRM and above in the Baseline discussion, the Act requires each DCM, SEF, and SDR to develop and maintain a program of system safeguards-related risk analysis and oversight to identify and minimize sources of operational risk.[229] The Act mandates that in this connection each DCM, SEF, and SDR must develop and maintain automated systems that are reliable, secure, and have adequate scalable capacity, and must ensure system reliability, security, and capacity through appropriate controls and procedures.[230]

The Commission's current system safeguards rules for DCMs, SEFs, and SDRs mandate that, in order to achieve these statutory requirements, each DCM, SEF, and SDR must conduct testing and review sufficient to ensure that its automated systems are reliable, secure, and have adequate scalable capacity.[231] The Commission believes, as the generally accepted standards and best practices noted in the NPRM make clear, that it is essentially impossible for a DCM, SEF, or SDR to fulfill its current obligation to conduct testing sufficient to ensure the reliability, security, and capacity of its automated systems without conducting ETRAs.[232] If compliance with the current testing requirements as clarified by the final rules results in costs to a DCM, SEF, or SDR beyond those it already incurs in this connection, the Commission believes that such additional costs are attributable to compliance with the current rules and not to the final rules. Accordingly, the Commission believes that clarifying the rules will not impose any new costs for DCMs, SEFs, and SDRs.

(b) ETRAs by Independent Contractors or Employees of the DCM, SEF, or SDR

The Commission did not receive any comments addressing the costs of the proposed rules which called for ETRAs to be conducted by either independent contractors or employees not responsible for development or operation of the systems or capabilities. The Commission is adopting the proposed requirements and all DCMs, SEFs, and SDRs will have the same flexibility in the final rules.

(c) ETRA Frequency Requirement for Covered DCMs and SDRs

The final rules require covered DCMs and SDRs to conduct ETRAs at least annually. The Commission's current rules require DCMs and SDRs to conduct regular, periodic, objective testing of their automated systems.[233] Therefore, the final rules will impose new costs relative to the requirements of the current rules.[234] CME suggested that ETRAs would benefit from incorporating the results of controls testing and other testing, and suggested that it would be beneficial and less costly to align the requirement for completing an ETRA with the applicable frequency requirement for controls testing. Tradeweb suggested that an annual full assessment would be burdensome and costly, and suggested that, in lieu of repeated full assessments, annual review and approval of previous assessments should be sufficient. The Commission believes that, as best practices provide, regularly updated ETRAs are crucial to the effectiveness of system safeguards in today's rapidly changing cybersecurity environment.[235] The Commission does not accept the suggestion that ETRAs should only be required as often as a complete cycle of controls testing is completed, not least because the final rule is adopting the suggestion to lengthen that cycle to three rather than two years. Because ETRAs that provide current assessment of current risks are essential to effective programs of system safeguards risk analysis and oversight, the Commission disagrees with the suggestion that annual review and re-approval of previous assessments would be sufficient. However, the Commission believes that thorough updating of a previous assessment conducted in compliance with the ETRA requirements set out in the NPRM can be sufficient to fulfill the purposes of an appropriate ETRA, and can reduce costs and burdens without impairment of the purposes of the CEA and the system safeguards rules. Accordingly, the final rules clarify that such updating of a previous fully compliant ETRA, in light of current risks and circumstances, can fulfill the ETRA requirement.

(d) Cost Estimates for Covered DCMs and SDRs

CME estimated that the Commission's proposed ETRA requirement would result in an additional cost of $500,000 every two years. Based on the information from the DMO Preliminary Survey, the current average cost for covered DCMs and SDRs conducting the assessment is approximately $1,347,950 annually. However, the Commission notes that actual costs may vary widely among the affected entities due to the size of the organization, the complexity of the automated systems, and the scope of the assessment. The Commission recognizes that the affected entities may undertake an evaluation, on an initial and ongoing basis, regarding internal policies and procedures that may need to be revised. If such an evaluation is required, the Commission believes that any incremental costs will be minor.

(3) Benefits

The Commission believes that ETRAs are an essential component of a comprehensive system safeguard program. ETRAs can be viewed as a strategic approach through which DCMs, SEFs, and SDRs identify risks and align their systems goals accordingly. The Commission believes that these requirements are necessary to support a strong risk management framework, thereby helping to protect DCMs, SEFs, SDRs, and market participants, and helping to mitigate the risk of market disruptions.

The final rules provide clarity to covered DCMs and SDRs concerning the minimum assessment frequency. Best practices support annual or more frequent assessment of technology and cybersecurity risk. For example, FINRA states that firms conducting appropriate risk assessment do so either annually or on an ongoing basis throughout the year, in either case culminating in an annual risk assessment report.[236] The Commission believes that the frequency requirement would better position covered DCMs and SDRs to identify, estimate, and prioritize the risks facing them in today's cybersecurity threat environment.

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[229] 80 FR 80139, 80164, 80175 (Dec. 23, 2015). CEA section 5(d)(20) (for DCMs); CEA section 5h(f)(14) (for SEFs); CEA section 21(f)(4)(A) and 17 CFR 49.24(a) (for SDRs).

[230] *Id.*

[231] Commission regulations §§ 38.1051(h) (for DCMs), 37.1401(g) (for SEFs), and 49.24(j) (for SDRs). 17 CFR 38.1051(h); 17 CFR 37.1401(g); and 17 CFR 49.24(j).

[232] 80 FR 80139, 80175 (Dec. 23, 2015). *See, e.g.,* NIST 800–53A, Rev.1, at F226, June 2010, available at *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf.*

[233] *See* Commission regulations §§ 38.1051(h) (for DCMs) and 49.24(j) (for SDRs); 17 CFR 38.1051(h); 17 CFR 49.24(j).

[234] Based on the information from the DMO Preliminary Survey, the Commission understands that most large DCMs and SDRs currently conduct ETRAs at the minimum frequency specified in the final rule.

[235] FINRA, Report on Cybersecurity Practices (February 2015), at 14, available at *https://www.finra.org/sites/default/files/p602363%20Report%20on%20Cybersecurity%20Practices_0.pdf.*

l. Scope for Testing and Assessment: §§ 38.1051(k), 37.1401(k), and 49.24(l)

(1) Summary of Final Rules

The final rules provide that the scope for all system safeguards testing and assessment must be broad enough to include the testing of automated systems and controls that the entity's required program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable an intruder or unauthorized user or insider to: (1) Interfere with the entity's operations or with fulfillment of the entity's statutory and regulatory responsibilities; (2) impair or degrade the reliability, security, or adequate scalable capacity of the entity's automated systems; (3) add to, delete, augment, modify, exfiltrate, or compromise the integrity of any data related to the entity's regulated activities; or (4) undertake any other unauthorized action affecting the entity's regulated activities or the hardware or software used in connection with those activities.

(2) Costs and Benefits and Discussion of Comments

The Commission believes that the costs and benefits associated with the scope for testing and assessment are generally attributable to the substantive testing requirements; therefore they are generally discussed in the cost and benefit considerations related to the rules describing the requirements for each test or assessment. However, as discussed in the preamble, a number of commenters suggested that the scope provisions of the NPRM were overbroad, and that the proposed requirement to perform "all" testing necessary to identify "any" vulnerability was impossible to achieve in practice. CME suggested that the NPRM's overbroad scope provision could impose outsized costs without yielding commensurate benefits. In order to provide the clarity requested by commenters, the final rules call for the scope of system safeguards testing to be based on appropriate risk and threat analysis. In other words, it should include the testing that the regulatee's program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable the deleterious actions by intruders or unauthorized users listed in the scope provisions of the proposed rules. The Commission agrees with the comments suggesting that this approach avoids imposing undue burdens and costs, while supporting the purposes of the CEA and the Commission's system safeguards rules.

m. Internal Reporting and Review: §§ 38.1051(l), 37.1401(l), and 49.24(m)

(1) Summary of Final Rules

The final rules require the senior management and the Board of Directors of the DCM, SEF, or SDR to receive and review reports setting forth the results of all testing and assessment required by the respective sections. In addition, the final rules require the DCM, SEF, or SDR to establish and follow appropriate procedures for the remediation of issues identified through such review, as provided in §§ 38.1051(m), 37.1401(m), and 49.24(n) (Remediation), and for evaluation of the effectiveness of testing and assessment protocols.

(2) Costs and Discussion of Comments

The final rules clarify the testing requirements by specifying and defining certain aspects of DCM, SEF, and SDR risk analysis and oversight programs that are necessary to fulfillment of the testing requirements and achievement of their purposes. As stated in the NPRM, this clarification includes review of system safeguard testing and assessments by senior management and the DCM's, SEF's, or SDR's Board of Directors, which is recognized as best practice for system safeguards.[237] The Commission believes, as the generally accepted standards and best practices noted in the NPRM make clear, that it is essentially impossible for a DCM, SEF, or SDR to fulfill its current obligation to conduct testing sufficient to ensure the reliability, security, and capacity of its automated systems without performing appropriate internal reporting and review of test results.[238] If compliance with the current testing requirements as clarified by the final rules results in costs to a DCM, SEF, or SDR beyond those it already incurs, the Commission believes that such additional costs would be attributable to compliance with the current regulations and not to the final rules. Accordingly, the Commission believes that clarifying the rules will not impose any new costs for DCMs, SEFs, and SDRs.

ICE, MGEX, and Nadex commented that test result reports can be voluminous, technical, and complex, and that requiring boards and senior management to review each such document could produce an undue burden without commensurate benefits. As discussed in the preamble, the Commission notes that effective board of directors and senior management oversight of system safeguards does not require board or senior management review of every detail of each such report. Board and senior management review of appropriate summaries and compilations of test and assessment results can be an effective and acceptable way of fulfilling the internal reporting and review requirement, provided that such summaries give board members and senior management sufficiently detailed information to enable them to conduct effective and informed oversight. The appropriate level of information should also enable boards and senior management to evaluate the overall effectiveness of testing and assessment protocols, and direct and oversee appropriate remediation of issues identified through their review of test results.

(3) Benefits

The Commission believes that internal reporting and review are an essential component of a comprehensive and effective system safeguard program. While senior management and the DCM's, SEF's, or SDR's board of directors will have to devote resources to reviewing testing and assessment reports, active supervision by senior management and the board of directors promotes responsibility and accountability by affording them greater opportunity to evaluate the effectiveness of the testing and assessment protocols. Moreover, the attention by the board of directors and senior management should help to promote a focus on such reviews and issues, and enhance communication and coordination regarding such reviews and issues among the business, technology, legal, and compliance personnel of the DCM, SEF, and SDR. Active supervision by senior management and the board of directors also promotes a more efficient, effective, and reliable DCM and SDR risk management and operating structure. Consequently, DCMs, SEFs, and SDRs should be better positioned to strengthen the integrity, resiliency, and availability of their automated systems.

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[236] FINRA, Report on Cybersecurity Practices (February 2015), at 14, available at *https://www.finra.org/sites/default/files/p602363%20Report%20on%20Cybersecurity%20Practices_0.pdf.*

[237] 80 FR 80139, 80176 (Dec. 23, 2015).

[238] *See, e.g.,* NIST SP 800–115, Technical Guide to Information Security Testing and Assessment, at 6–10—6–12, September 2008, available at *http://csrc.nist.gov/publications/nistpubs/800-115/SP800-115.pdf.*

n. Remediation: §§ 38.1051(m), 37.1401(m), and 49.24(n)

(1) Summary of Final Rules

The final rules require DCMs, SEFs, and SDRs to identify and document the vulnerabilities and deficiencies in the entity's systems revealed by the testing and assessment in the respective sections. The entity shall conduct and document an appropriate risk analysis of the risks presented by such vulnerabilities and deficiencies, to determine and document whether to remediate or accept each risk. When an entity determines to remediate a vulnerability or deficiency, it must remediate in a timely manner given the nature and magnitude of the associated risk. The Commission did not receive any comments regarding the costs and benefits of the proposed rules.

(2) Costs and Discussion of Comments

The final rules clarify the testing requirements by specifying and defining certain aspects of DCM, SEF, and SDR risk analysis and oversight programs that are necessary to fulfillment of the testing requirements and achievement of their purposes. This clarification includes remediation. As stated in the NPRM, remediation of vulnerabilities and deficiencies revealed by cybersecurity testing is a best practice and a fundamental purpose of such testing.[239] The Commission believes, as the generally accepted standards and best practices noted in the NPRM make clear, that it is essentially impossible for a DCM, SEF, or SDR to fulfill its current obligation to conduct testing sufficient to ensure the reliability, security, and capacity of its automated systems without performing remediation.[240] If compliance with the current testing requirements as clarified by the final rules results in costs to a DCM, SEF, or SDR beyond those it already incurs, the Commission believes that such additional costs would be attributable to compliance with the current regulations and not to the final rules. Accordingly, the Commission believes that clarifying the rules will not impose any new costs for DCMs, SEFs, and SDRs. However, as discussed below, the Commission is amending two aspects in the final rules where it believes the net effect will reduce the overall costs and burdens relative to the proposed rules.

Nadex and Tradeweb suggested that the proposed requirement to identify and remediate "all" vulnerabilities and deficiencies in a regulatee's systems was impossible to achieve in practice. Nadex observed that other discussion in the NPRM indicated Commission intent to require remediation of vulnerabilities and deficiencies identified in the testing results, and suggested amending the final rule to make this clear. Noting that remediation after a cyber attack often takes time, Tradeweb argued that regulatees should not be penalized for that fact, and requested Commission guidance on what constitutes timely remediation, perhaps including specification that remediation over nine to twelve months would be timely. As discussed in the preamble, the Commission agrees with commenters that a requirement calling for a DCM, SEF, or SDR to remediate all vulnerabilities and deficiencies could be read as overbroad and impossible in practice. Accordingly, the Commission is narrowing the remediation requirement to address remediation or acceptance of the vulnerabilities and deficiencies of which an entity is aware or through an appropriate program of risk analysis and oversight should be aware, rather than the remediation of all vulnerabilities and deficiencies. This revision is being made to reduce burdens and costs to the extent possible without impairing the purposes of the CEA and the Commission's system safeguards regulations.

The aspect of the final rules that could impose a slight additional cost relative to the proposed rules is the explicit requirement that all DCMs, SEFs, and SDRs document the vulnerabilities and deficiencies in its systems revealed by the required testing and assessment, document an appropriate analysis of the risks presented by such vulnerabilities, and document its decision concerning whether to remediate or accept each risk and the remediation steps chosen. As stated in the preamble, the NPRM proposal to require identification of vulnerabilities was intended to include their documentation. Effective remediation would be impossible without documentation of both the vulnerabilities in question and the remediation steps needed. However, because documentation was not explicitly required in the proposal, the Commission is treating the documentation requirement in the final rules as a possible slight additional cost. The Commission notes, however, that the narrowing of remediation requirement in the final rules represents a considerable reduction in burdens and costs and will more than offset the burdens and costs associated with the documentation requirement.

(3) Benefits

The Commission believes that effective remediation is a critical component of a comprehensive and effective system safeguard program. Moreover, remediation may reduce the frequency and severity of systems disruptions and breaches. In addition, remediation helps to ensure that DCMs, SEFs, and SDRs dedicate appropriate resources to address system safeguard-related deficiencies in a timely fashion. Remediation also places an emphasis on mitigating harm to market participants while promoting market integrity. Without a requirement for timely remediation, the impact of vulnerabilities or deficiencies identified by the testing or assessment could persist and have a detrimental effect on the futures and swaps markets generally as well as market participants.

o. Required Production of Annual Trading Volume: § 38.1051(n)

(1) Summary of Final Rule

The final rule requires each DCM to provide its annual total trading volume to the Commission for calendar year 2015 and each calendar year thereafter. This information is required for 2015 within 30 calendar days of the effective date of the final version of this rule, and required for 2016 and subsequent years by January 31 of the following calendar year.

(2) Costs and Discussion of Comments

As discussed in the PRA section, the Commission did not receive any comments concerning the accuracy of its estimate that each DCM would spend approximately $22.00 annually to comply with the proposed requirement. However, CME stated that the Commission should consider alternatives to the reporting requirements in proposed § 38.1051(n) because the Commission currently receives daily trade reports regarding volume pursuant to DCM Core Principle 8 and part 16 of the Commission's regulations. The Commission notes that while it receives daily trade information from DCMs pursuant to part 16, it does not receive total annual trading volume from DCMs. Additionally, the Commission believes that Core Principle 8 is inapplicable because it requires DCMs to publish daily volume, but does not require submission of that information to the Commission. The submission of annual trading volume is essential for the Commission to accurately evaluate whether a particular DCM must comply with the enhanced system safeguard requirements. The Commission believes that all DCMs generally calculate their annual trading volume in the usual course of business and many of the DCMs already publish this information on their web site. The Commission also believes that each DCM would spend approximately half an hour to prepare and file the trading volume information with Commission at a cost of approximately $24.80 annually.[241]

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[239] 80 FR 80139, 80167 (Dec. 23, 2015).

[240] *See, e.g.*, NIST SP 800–115, Technical Guide to Information Security Testing and Assessment, at 6–10—6–12, September 2008, available at *http://csrc.nist.gov/publications/nistpubs/800-115/SP800-115.pdf.*

(3) Benefits

The Commission believes that it is necessary to require all DCMs to provide the Commission with annual trading volume information. Otherwise, the Commission would be unable to accurately evaluate whether a particular DCM would be subject to the enhanced covered DCM requirements. As stated in the final rule, the Commission will provide each DCM with its percentage of the combined annual trading volume of all DCMs regulated by the Commission for the preceding calendar year within 60 calendar days of the effective date of the final rule, and for subsequent years by February 28. Therefore, all DCMs will receive certainty from the Commission regarding whether they must comply with the provisions applicable to covered DCMs. This requirement will support more accurate application of the final rules.

4. Section 15(a) Factors

a. Protection of Market Participants and the Public

The Commission believes that the final rules will benefit the futures and swaps markets by promoting more robust automated systems and therefore fewer disruptions and market-wide closures, systems compliance issues, and systems intrusions. Fewer disruptions mean that investors will be able to trade more predictably, reducing the likelihood of investors facing difficulty in, for example, liquidating positions. Because automated systems play a central and critical role in today's electronic financial market environment, oversight of DCMs, SEFs, and SDRs with respect to automated systems is an essential part of effective oversight of both futures and swaps markets. In addition, providing the Commission with reports concerning system safeguards testing and assessments required by the rules will facilitate the Commission's oversight of futures and swaps markets, augment the Commission's efforts to monitor systemic risk, and will further the protection of market participants and the public by helping to ensure that automated systems are available, reliable, secure, have adequate scalable capacity, and are effectively overseen. As a result, the Commission also expects fewer interruptions to the systems that directly support the respective entities, including matching engines, regulatory and surveillance systems, and the dissemination of market data, which should help ensure compliance with the relevant statutory and regulatory obligations. Moreover, market participants will benefit from systems that are secure and able to protect their anonymity with respect to positions in the marketplace and other aspects of their personally-identifiable information.

b. Efficiency, Competitiveness, and Financial Integrity of the Markets

A DCM or SEF that has system safeguard policies and procedures in place, including the timely remediation of vulnerabilities and deficiencies in light of appropriate risk analysis, will promote overall market confidence and could lead to greater market efficiency, competitiveness, and perceptions of financial integrity. Safeguarding the reliability, security, and capacity of DCM, SEF, and SDR computer systems is essential to mitigation of systemic risk for the nation's financial sector as a whole. A comprehensive testing program capable of identifying operational risks will enhance the efficiency, and financial integrity of the markets by increasing the likelihood that trading remains uninterrupted and transactional data and positions are not lost.[242] A DCM or SEF with such a program also promotes confidence in the markets, and encourages liquidity and stability. Moreover, the ability of a DCM or SEF to recover and resume trading promptly in the event of a disruption of their operations, or an SDR to recover and resume its swap data recordkeeping and reporting function, is highly important to the U.S. economy and ensuring the resiliency of the automated systems is a critical part of the Commission's mission. Because SDRs hold data needed by financial regulators from multiple jurisdictions, safeguarding such systems will also be essential to mitigation of systemic risk world-wide. Notice to the Commission concerning the results of system safeguard tests performed by DCMs, SEFs, and SDRs will assist the Commission's oversight and its ability to assess systemic risk levels. It would present unacceptable risks to the U.S. financial system if futures and swaps markets that comprise critical components of the world financial system, and SDRs that hold data concerning swaps, were to become unavailable for an extended period of time for any reason, and adequate system safeguards are essential to the mitigation of such risks.

c. Price Discovery

Any interruption in trading on a DCM or SEF can distort the price discovery process by preventing prices from adjusting to new information. Similarly, any interruption in the operations of an SDR will reduce the transparency of swap prices, thereby making it more difficult for traders to observe prices, and leading to the potential for higher trading costs. Interruptions in SDR operations also hamper the Commission's ability to examine potential price discrepancies and other trading inconsistencies in the swaps market. Therefore, reliable functioning computer systems and networks are essential in protecting the price discovery process. The Commission believes that the final rules will reduce the incidence and severity of automated system security breaches and functional failures. In addition, the Commission views the final rules as likely to facilitate the price discovery process by mitigating the risk of operational market interruptions from disjoining forces of supply and demand. The presence of thorough system safeguards testing signals to the market that a DCM or SEF is a financially sound place to trade, thus attracting greater liquidity which leads to more accurate price discovery.

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[241] 80 FR 80139, 80177 (Dec. 23, 2015). In arriving at a wage rate for the hourly costs imposed, Commission staff used the National Industry-Specific Occupational Employment and Wage Estimates, published in May (2015 Report). The hourly rate for a Compliance Officer in the Securities and Commodity Exchanges as published in the 2015 Report was $49.59 per hour. In the NPRM, the Commission's estimate of $22.00 per respondent was based on the hourly wage of $44.03 for a Compliance Officer in the 2014 Report. 80 FR 80139, 80163 (Dec. 23, 2015).

[242] During the CFTC Roundtable, one of the participants noted that "if data is disclosed about activity in the markets, that is a survivable event from a resiliency perspective, but if we don't know who owns what and what their positions are, then there are no markets." CFTC Roundtable, at 71.

d. Sound Risk Management Practices

The final rules will benefit the risk management practices of both the regulated entities and the participants who use the facilities of those entities. Participants who use DCMs or SEFs to manage commercial price risks should benefit from markets that behave in an orderly and controlled fashion. If prices move in an uncontrolled fashion due to a cybersecurity incident, those who manage risk may be forced to exit the market as a result of unwarranted margin calls or deterioration of their capital. In addition, those who want to enter the market to manage risk may only be able to do so at prices that do not reflect the actual supply and demand fundamentals due to the effects of a cybersecurity incident. Relatedly, participants may have greater confidence in their ability to unwind positions because market disruptions would be less common. With respect to SDRs, the Commission believes that the ability of participants in the swaps market to report swap transactions to an SDR likewise serve to allow participants to better observe swap prices, hence lowering trading costs. Fewer interruptions of SDR operations also serve to improve regulators' ability to monitor risk management practices through better knowledge of open positions and SDR services related to various trade, collateral, and risk management practices. The Commission notes regulator access (both domestic and foreign) to the data held by an SDR is essential for regulators to be able to monitor the swap market and certain participants relating to systemic risk.

5. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA in issuing any order or adopting any Commission rule or regulation. The Commission does not anticipate that the amendments adopted herein would promote or result in anticompetitive consequences or behavior.

IV. Compliance Dates

A. Comments Received

For final rules issued by the Commission and published in the **Federal Register**, the Commission has discretion to set both the date on which a final rule becomes effective following its publication (the "effective date") and the date on which it will begin enforcement of regulatory provisions (the "compliance date").[243] In setting forth effective dates and compliance dates, the Commission considers the nature and particular provisions of the rule in question, comments received, available enforcement resources, and the goals and purposes of the CEA and the rule.

The Commission received comments concerning when full compliance with the provisions of the system safeguards testing requirements rule should be enforced for designated contract markets, swap data repositories, and swap execution facilities. Tradeweb suggested that the Commission specify an adequate implementation period of 9 to 12 months for the final rule, to allow regulatees sufficient time to prepare and implement additional policies and procedures needed to comply with the rule. CFE commented that the Commission should provide an implementation period sufficient to allow regulatees to review the final rules, compare them with their current testing and current risk analysis and oversight programs, and implement any changes needed. CFE noted that when the Securities and Exchange Commission ("SEC") adopted its comparable Regulation Systems Compliance and Integrity ("Regulation SCI"), that regulation became effective 60 days after **Federal Register** publication, and the SEC adopted a compliance date of nine months after the effective date. CFE urged the Commission to take the same approach.

The Commission has considered these comments, agrees with them, and has determined to provide an effective date and compliance dates for system safeguards testing effectively incorporating commenters' suggestions, as set forth below.

The Commission notes that various aspects of the final rule require compliance within a specified period of time, such as performance of certain types of testing quarterly or annually. A starting point is needed for measurement of such periods. Because cybersecurity testing is crucial to resilience in today's cybersecurity threat environment, the Commission believes that prudence and protection of the public interest require starting the "clock" for measuring the periods within which the various types of testing required by the final rule must be conducted as soon as possible, by setting the earliest possible effective date for the rule. Starting the clock in this way does not mean that instant compliance is required; rather, the effective date provides the starting point for measuring the implementation period provided between the effective date and the compliance date on which a given provision of the rule is enforceable. Within this implementation period, a regulated entity can review the rule's requirements, compare them with current testing and risk analysis and oversight practices, implement any needed changes, and come into compliance with the rule.

For these reasons, the Commission has determined to set the effective date of this final rule as the date of its publication in the **Federal Register**, and to set the compliance dates applicable to the various provisions of the final rule as set forth below.

1. For vulnerability testing, the compliance date shall be 180 calendar days after the effective date. DCMs, SEFs, and SDRs must be conducting vulnerability testing that complies with this final rule by that compliance date.

2. For both external and internal penetration testing, the compliance date shall be one year after the effective date. DCMs, SEFs, and SDRs must conduct and complete penetration testing that complies with this final rule by that compliance date. Covered DCMs and SDRs must engage an independent contractor to conduct and complete penetration testing that complies with this final rule by that compliance date.

3. For controls testing, the compliance date shall be one year after the effective date. DCMs, SEFs, and SDRs must be conducting controls testing that complies with this final rule by that compliance date. Covered DCMs and SDRs must engage an independent contractor to conduct and complete testing of all key controls within three years of the effective date.

4. For SIRP testing, the compliance date shall be 180 days after the effective date. DCMs, SEFs, and SDRs must have a SIRP and complete testing of the SIRP by that compliance date.

5. For enterprise technology risk assessment, the compliance date shall be one year after the effective date. DCMs, SEFs, and SDRs must complete an ETRA that complies with this final rule by that compliance date.

6. For required updating of BC–DR plans and emergency procedures, the compliance date shall be one year after the effective date. DCMs, SEFs, and SDRs must complete an update of their BC–DR plans and emergency procedures by that compliance date.

7. For required production by DCMs of their annual total trading volume, the compliance date shall be 30 calendar days after the effective date.

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[243] *See Heckler* v. *Chaney,* 470 U.S. 821 (1985).

8. For system safeguards books and records requirements, the compliance date shall be the effective date.

9. For all other aspects of the final rule, the compliance date shall be one year after the effective date. DCMs, SEFs, and SDRs must be in full compliance with the final rule by that compliance date.

List of Subjects in 17 CFR Parts 37, 38, and 49

System safeguards testing requirements.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission amends 17 CFR chapter I as follows:

PART 37—SWAP EXECUTION FACILITIES

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, 7b–3, and 12a, as amended by Titles VII and VIII of the Dodd Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 2. Amend § 37.1401 as follows:
■ a. Revise paragraphs (a) and (b);
■ b. Remove paragraph (f);
■ c. Redesignate paragraphs (c) through (e) as paragraphs (d) through (f);
■ d. Add new paragraph (c);
■ e. Revise paragraph (g);
■ f. Redesignate paragraph (h) as paragraph (j); and
■ g. Add new paragraphs (h), (i), (k), (l), and (m).

The revisions and additions read as follows:

§ 37.1401 Requirements.

(a) A swap execution facility's program of risk analysis and oversight with respect to its operations and automated systems shall address each of the following categories of risk analysis and oversight:

(1) *Enterprise risk management and governance.* This category includes, but is not limited to: Assessment, mitigation, and monitoring of security and technology risk; security and technology capital planning and investment; board of directors and management oversight of technology and security; information technology audit and controls assessments; remediation of deficiencies; and any other elements of enterprise risk management and governance included in generally accepted best practices.

(2) *Information security.* This category includes, but is not limited to, controls relating to: Access to systems and data (including least privilege, separation of duties, account monitoring and control); user and device identification and authentication; security awareness training; audit log maintenance, monitoring, and analysis; media protection; personnel security and screening; automated system and communications protection (including network port control, boundary defenses, encryption); system and information integrity (including malware defenses, software integrity monitoring); vulnerability management; penetration testing; security incident response and management; and any other elements of information security included in generally accepted best practices.

(3) *Business continuity-disaster recovery planning and resources.* This category includes, but is not limited to: Regular, periodic testing and review of business continuity-disaster recovery capabilities, the controls and capabilities described in paragraph (c), (d), (j), and (k) of this section; and any other elements of business continuity-disaster recovery planning and resources included in generally accepted best practices.

(4) *Capacity and performance planning.* This category includes, but is not limited to: Controls for monitoring the swap execution facility's systems to ensure adequate scalable capacity (including testing, monitoring, and analysis of current and projected future capacity and performance, and of possible capacity degradation due to planned automated system changes); and any other elements of capacity and performance planning included in generally accepted best practices.

(5) *Systems operations.* This category includes, but is not limited to: System maintenance; configuration management (including baseline configuration, configuration change and patch management, least functionality, inventory of authorized and unauthorized devices and software); event and problem response and management; and any other elements of system operations included in generally accepted best practices.

(6) *Systems development and quality assurance.* This category includes, but is not limited to: Requirements development; pre-production and regression testing; change management procedures and approvals; outsourcing and vendor management; training in secure coding practices; and any other elements of systems development and quality assurance included in generally accepted best practices.

(7) *Physical security and environmental controls.* This category includes, but is not limited to: Physical access and monitoring; power, telecommunication, and environmental controls; fire protection; and any other elements of physical security and environmental controls included in generally accepted best practices.

(b) In addressing the categories of risk analysis and oversight required under paragraph (a) of this section, a swap execution facility shall follow generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of automated systems.

(c) A swap execution facility shall maintain a business continuity-disaster recovery plan and business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its responsibilities and obligations as a swap execution facility following any disruption of its operations. Such responsibilities and obligations include, without limitation: Order processing and trade matching; transmission of matched orders to a designated clearing organization for clearing, where appropriate; price reporting; market surveillance; and maintenance of a comprehensive audit trail. A swap execution facility's business continuity-disaster recovery plan and resources generally should enable resumption of trading and clearing of swaps executed on or pursuant to the rules of the swap execution facility during the next business day following the disruption. Swap execution facilities determined by the Commission to be critical financial markets are subject to more stringent requirements in this regard, set forth in § 40.9 of this chapter. A swap execution facility shall update its business continuity-disaster recovery plan and emergency procedures at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually.

* * * * *

(g) As part of a swap execution facility's obligation to produce books and records in accordance with § 1.31 of this chapter, Core Principle 10 (Recordkeeping and Reporting), and §§ 37.1000 and 37.1001, a swap execution facility shall provide to the Commission the following system safeguards-related books and records, promptly upon the request of any Commission representative:

(1) Current copies of its business continuity-disaster recovery plans and other emergency procedures;

(2) All assessments of its operational risks or system safeguards-related controls;

(3) All reports concerning system safeguards testing and assessment required by this chapter, whether performed by independent contractors or by employees of the swap execution facility; and

(4) All other books and records requested by Commission staff in connection with Commission oversight of system safeguards pursuant to the Act or Commission regulations, or in connection with Commission maintenance of a current profile of the swap execution facility's automated systems.

(5) Nothing in § 37.1401(g) shall be interpreted as reducing or limiting in any way a swap execution facility's obligation to comply with Core Principle 10 (Recordkeeping and Reporting) or with § 1.31 of this chapter or with §§ 37.1000 or 37.1001.

(h) A swap execution facility shall conduct regular, periodic, objective testing and review of its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity. It shall also conduct regular, periodic testing and review of its business continuity-disaster recovery capabilities. Such testing and review shall include, without limitation, all of the types of testing set forth in paragraph (h) of this section.

(1) *Definitions.* As used in this paragraph (h):

Controls means the safeguards or countermeasures employed by the swap execution facility in order to protect the reliability, security, or capacity of its automated systems or the confidentiality, integrity, and availability of its data and information, and in order to enable the swap execution facility to fulfill its statutory and regulatory responsibilities.

Controls testing means assessment of the swap execution facility's controls to determine whether such controls are implemented correctly, are operating as intended, and are enabling the swap execution facility to meet the requirements established by this section.

Enterprise technology risk assessment means a written assessment that includes, but is not limited to, an analysis of threats and vulnerabilities in the context of mitigating controls. An enterprise technology risk assessment identifies, estimates, and prioritizes risks to swap execution facility operations or assets, or to market participants, individuals, or other entities, resulting from impairment of the confidentiality, integrity, and availability of data and information or the reliability, security, or capacity of automated systems.

External penetration testing means attempts to penetrate the swap execution facility's automated systems from outside the systems' boundaries to identify and exploit vulnerabilities. Methods of conducting external penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

Internal penetration testing means attempts to penetrate the swap execution facility's automated systems from inside the systems' boundaries, to identify and exploit vulnerabilities. Methods of conducting internal penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

Key controls means those controls that an appropriate risk analysis determines are either critically important for effective system safeguards or intended to address risks that evolve or change more frequently and therefore require more frequent review to ensure their continuing effectiveness in addressing such risks.

Security incident means a cyber security or physical security event that actually jeopardizes or has a significant likelihood of jeopardizing automated system operation, reliability, security, or capacity, or the availability, confidentiality or integrity of data.

Security incident response plan means a written plan documenting the swap execution facility's policies, controls, procedures, and resources for identifying, responding to, mitigating, and recovering from security incidents, and the roles and responsibilities of its management, staff and independent contractors in responding to security incidents. A security incident response plan may be a separate document or a business continuity-disaster recovery plan section or appendix dedicated to security incident response.

Security incident response plan testing means testing of a swap execution facility's security incident response plan to determine the plan's effectiveness, identify its potential weaknesses or deficiencies, enable regular plan updating and improvement, and maintain organizational preparedness and resiliency with respect to security incidents. Methods of conducting security incident response plan testing may include, but are not limited to, checklist completion, walk-through or table-top exercises, simulations, and comprehensive exercises.

Vulnerability testing means testing of a swap execution facility's automated systems to determine what information may be discoverable through a reconnaissance analysis of those systems and what vulnerabilities may be present on those systems.

(2) *Vulnerability testing.* A swap execution facility shall conduct vulnerability testing of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.

(i) A swap execution facility shall conduct such vulnerability testing at a frequency determined by an appropriate risk analysis.

(ii) Such vulnerability testing shall include automated vulnerability scanning, which shall follow generally accepted best practices.

(iii) A swap execution facility shall conduct vulnerability testing by engaging independent contractors or by using employees of the swap execution facility who are not responsible for development or operation of the systems or capabilities being tested.

(3) *External penetration testing.* A swap execution facility shall conduct external penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.

(i) A swap execution facility shall conduct such external penetration testing at a frequency determined by an appropriate risk analysis.

(ii) A swap execution facility shall conduct external penetration testing by engaging independent contractors or by using employees of the swap execution facility who are not responsible for development or operation of the systems or capabilities being tested.

(4) *Internal penetration testing.* A swap execution facility shall conduct internal penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.

(i) A swap execution facility shall conduct such internal penetration testing at a frequency determined by an appropriate risk analysis.

(ii) A swap execution facility shall conduct internal penetration testing by engaging independent contractors, or by using employees of the swap execution facility who are not responsible for development or operation of the systems or capabilities being tested.

(5) *Controls testing.* A swap execution facility shall conduct controls testing of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.

(i) A swap execution facility shall conduct controls testing, which includes testing of each control included in its program of risk analysis and oversight, at a frequency determined by an appropriate risk analysis. Such testing may be conducted on a rolling basis.

(ii) A swap execution facility shall conduct controls testing by engaging independent contractors or by using employees of the swap execution facility who are not responsible for development or operation of the systems or capabilities being tested.

(6) *Security incident response plan testing.* A swap execution facility shall conduct security incident response plan testing sufficient to satisfy the requirements set forth in paragraph (k) of this section.

(i) A swap execution facility shall conduct such security incident response plan testing at a frequency determined by an appropriate risk analysis.

(ii) A swap execution facility's security incident response plan shall include, without limitation, the swap execution facility's definition and classification of security incidents, its policies and procedures for reporting security incidents and for internal and external communication and information sharing regarding security incidents, and the hand-off and escalation points in its security incident response process.

(iii) A swap execution facility may coordinate its security incident response plan testing with other testing required by this section or with testing of its other business continuity-disaster recovery and crisis management plans.

(iv) A swap execution facility may conduct security incident response plan testing by engaging independent contractors or by using employees of the swap execution facility.

(7) *Enterprise technology risk assessment.* A swap execution facility shall conduct enterprise technology risk assessment of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.

(i) A swap execution facility shall conduct enterprise technology risk assessment at a frequency determined by an appropriate risk analysis. A swap execution facility that has conducted an enterprise technology risk assessment that complies with this section may conduct subsequent assessments by updating the previous assessment.

(ii) A swap execution facility may conduct enterprise technology risk assessments by using independent contractors or employees of the swap execution facility who are not responsible for development or operation of the systems or capabilities being assessed.

(i) To the extent practicable, a swap execution facility shall:

(1) Coordinate its business continuity-disaster recovery plan with those of the market participants it depends upon to provide liquidity, in a manner adequate to enable effective resumption of activity in its markets following a disruption causing activation of the swap execution facility's business continuity-disaster recovery plan;

(2) Initiate and coordinate periodic, synchronized testing of its business continuity-disaster recovery plan with those of the market participants it depends upon to provide liquidity; and

(3) Ensure that its business continuity-disaster recovery plan takes into account the business continuity-disaster recovery plans of its telecommunications, power, water, and other essential service providers.

* * * * *

(k) *Scope of testing and assessment.* The scope for all system safeguards testing and assessment required by this part shall be broad enough to include the testing of automated systems and controls that the swap execution facility's required program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable an intruder or unauthorized user or insider to:

(1) Interfere with the swap execution facility's operations or with fulfillment of its statutory and regulatory responsibilities;

(2) Impair or degrade the reliability, security, or adequate scalable capacity of the swap execution facility's automated systems;

(3) Add to, delete, modify, exfiltrate, or compromise the integrity of any data related to the swap execution facility's regulated activities; or

(4) Undertake any other unauthorized action affecting the swap execution facility's regulated activities or the hardware or software used in connection with those activities.

(l) *Internal reporting and review.* Both the senior management and the Board of Directors of a swap execution facility shall receive and review reports setting forth the results of the testing and assessment required by this section. A swap execution facility shall establish and follow appropriate procedures for the remediation of issues identified through such review, as provided in paragraph (m) of this section, and for evaluation of the effectiveness of testing and assessment protocols.

(m) *Remediation.* A swap execution facility shall identify and document the vulnerabilities and deficiencies in its systems revealed by the testing and assessment required by this section. The swap execution facility shall conduct and document an appropriate analysis of the risks presented by such vulnerabilities and deficiencies, to determine and document whether to remediate or accept the associated risk. When the swap execution facility determines to remediate a vulnerability or deficiency, it must remediate in a timely manner given the nature and magnitude of the associated risk.

Appendix B to Part 37 [Amended]

■ 3. In appendix B to part 37, in section 2, remove and reserve *Core Principle 14 of Section 5h of the Act—System Safeguards.*

PART 38—DESIGNATED CONTACT MARKETS

■ 4. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6c, 6d, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 7, 7a–2, 7b, 7b–1, 7b–3, 8, 9, 15, and 21, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 5. In § 38.1051, revise paragraphs (a), (b), (c), (g), (h), and paragraph (i) introductory text and add paragraphs (k), (l), (m), and (n) to read as follows:

§ 38.1051 General Requirements.

(a) A designated contract market's program of risk analysis and oversight with respect to its operations and automated systems shall address each of the following categories of risk analysis and oversight:

(1) *Enterprise risk management and governance.* This category includes, but is not limited to: Assessment, mitigation, and monitoring of security and technology risk; security and technology capital planning and investment; board of directors and management oversight of technology and security; information technology audit and controls assessments; remediation of deficiencies; and any other elements of enterprise risk management and governance included in generally accepted best practices.

(2) *Information security.* This category includes, but is not limited to, controls relating to: Access to systems and data (including least privilege, separation of duties, account monitoring and control); user and device identification and authentication; security awareness training; audit log maintenance, monitoring, and analysis; media protection; personnel security and screening; automated system and communications protection (including network port control, boundary defenses, encryption); system and information integrity (including malware defenses, software integrity monitoring); vulnerability management;

penetration testing; security incident response and management; and any other elements of information security included in generally accepted best practices.

(3) *Business continuity-disaster recovery planning and resources.* This category includes, but is not limited to: Regular, periodic testing and review of business continuity-disaster recovery capabilities, the controls and capabilities described in paragraphs (c), (d), (j), and (k) of this section; and any other elements of business continuity-disaster recovery planning and resources included in generally accepted best practices.

(4) *Capacity and performance planning.* This category includes, but is not limited to: Controls for monitoring the designated contract market's systems to ensure adequate scalable capacity (including testing, monitoring, and analysis of current and projected future capacity and performance, and of possible capacity degradation due to planned automated system changes); and any other elements of capacity and performance planning included in generally accepted best practices.

(5) *Systems operations.* This category includes, but is not limited to: System maintenance; configuration management (including baseline configuration, configuration change and patch management, least functionality, inventory of authorized and unauthorized devices and software); event and problem response and management; and any other elements of system operations included in generally accepted best practices.

(6) *Systems development and quality assurance.* This category includes, but is not limited to: Requirements development; pre-production and regression testing; change management procedures and approvals; outsourcing and vendor management; training in secure coding practices; and any other elements of systems development and quality assurance included in generally accepted best practices.

(7) *Physical security and environmental controls.* This category includes, but is not limited to: Physical access and monitoring; power, telecommunication, and environmental controls; fire protection; and any other elements of physical security and environmental controls included in generally accepted best practices.

(b) In addressing the categories of risk analysis and oversight required under paragraph (a) of this section, a designated contract market shall follow generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of automated systems.

(c) A designated contract market shall maintain a business continuity-disaster recovery plan and business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its responsibilities and obligations as a designated contract market following any disruption of its operations. Such responsibilities and obligations include, without limitation: Order processing and trade matching; transmission of matched orders to a designated clearing organization for clearing; price reporting; market surveillance; and maintenance of a comprehensive audit trail. The designated contract market's business continuity-disaster recovery plan and resources generally should enable resumption of trading and clearing of the designated contract market's products during the next business day following the disruption. Designated contract markets determined by the Commission to be critical financial markets are subject to more stringent requirements in this regard, set forth in § 40.9 of this chapter. Electronic trading is an acceptable backup for open outcry trading in the event of a disruption. A designated contract market shall update its business continuity-disaster recovery plan and emergency procedures at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually.

* * * * *

(g) As part of a designated contract market's obligation to produce books and records in accordance with § 1.31 of this chapter, Core Principle 18 (Recordkeeping), and §§ 38.950 and 38.951, a designated contract market shall provide to the Commission the following system safeguards-related books and records, promptly upon the request of any Commission representative:

(1) Current copies of its business continuity-disaster recovery plans and other emergency procedures;

(2) All assessments of its operational risks or system safeguards-related controls;

(3) All reports concerning system safeguards testing and assessment required by this chapter, whether performed by independent contractors or by employees of the designated contract market; and

(4) All other books and records requested by Commission staff in connection with Commission oversight of system safeguards pursuant to the Act or Commission regulations, or in connection with Commission maintenance of a current profile of the designated contract market's automated systems.

(5) Nothing in this paragraph (g) shall be interpreted as reducing or limiting in any way a designated contract market's obligation to comply with Core Principle 18 (Recordkeeping) or with § 1.31 of this chapter, or with § 38.950 or § 38.951.

(h) A designated contract market shall conduct regular, periodic, objective testing and review of its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity. It shall also conduct regular, periodic testing and review of its business continuity-disaster recovery capabilities. Such testing and review shall include, without limitation, all of the types of testing set forth in this paragraph (h). A covered designated contract market, as defined in this section, shall be subject to the additional requirements regarding minimum testing frequency and independent contractor testing set forth in this paragraph (h).

(1) *Definitions.* As used in paragraph (h) of this section:

Controls means the safeguards or countermeasures employed by the designated contract market in order to protect the reliability, security, or capacity of its automated systems or the confidentiality, integrity, and availability of its data and information, and in order to enable the designated contract market to fulfill its statutory and regulatory responsibilities.

Controls testing means assessment of the designated contract market's controls to determine whether such controls are implemented correctly, are operating as intended, and are enabling the designated contract market to meet the requirements established by this section.

Covered designated contract market means a designated contract market whose annual total trading volume in calendar year 2015, or in any subsequent calendar year, is five percent (5%) or more of the combined annual total trading volume of all designated contract markets regulated by the Commission for the year in question, based on annual total trading volume information provided to the Commission by each designated contract market pursuant to the procedure set forth in this chapter. A covered designated contract market that has annual total trading volume of less than five percent (5%) of the combined annual total trading volume of all designated contract markets regulated by the Commission for three consecutive calendar years ceases to be a covered designated contract market as of March 1 of the calendar year following such three consecutive calendar years.

Enterprise technology risk assessment means a written assessment that includes, but is not limited to, an analysis of threats and vulnerabilities in the context of mitigating controls. An enterprise technology risk assessment identifies, estimates, and prioritizes risks to designated contract market operations or assets, or to market participants, individuals, or other entities, resulting from impairment of the confidentiality, integrity, and availability of data and information or the reliability, security, or capacity of automated systems.

External penetration testing means attempts to penetrate the designated contract market's automated systems from outside the systems' boundaries to identify and exploit vulnerabilities. Methods of conducting external penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

Internal penetration testing means attempts to penetrate the designated contract market's automated systems from inside the systems' boundaries, to identify and exploit vulnerabilities. Methods of conducting internal penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

Key controls means those controls that an appropriate risk analysis determines are either critically important for effective system safeguards or intended to address risks that evolve or change more frequently and therefore require more frequent review to ensure their continuing effectiveness in addressing such risks.

Security incident means a cyber security or physical security event that actually jeopardizes or has a significant likelihood of jeopardizing automated system operation, reliability, security, or capacity, or the availability, confidentiality or integrity of data.

Security incident response plan means a written plan documenting the designated contract market's policies, controls, procedures, and resources for identifying, responding to, mitigating, and recovering from security incidents, and the roles and responsibilities of its management, staff and independent contractors in responding to security incidents. A security incident response plan may be a separate document or a business continuity-disaster recovery plan section or appendix dedicated to security incident response.

Security incident response plan testing means testing of a designated contract market's security incident response plan to determine the plan's effectiveness, identify its potential weaknesses or deficiencies, enable regular plan updating and improvement, and maintain organizational preparedness and resiliency with respect to security incidents. Methods of conducting security incident response plan testing may include, but are not limited to, checklist completion, walk-through or table-top exercises, simulations, and comprehensive exercises.

Vulnerability testing means testing of a designated contract market's automated systems to determine what information may be discoverable through a reconnaissance analysis of those systems and what vulnerabilities may be present on those systems.

(2) *Vulnerability testing.* A designated contract market shall conduct vulnerability testing of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.

(i) A designated contract market shall conduct such vulnerability testing at a frequency determined by an appropriate risk analysis. At a minimum, a covered designated contract market shall conduct such vulnerability testing no less frequently than quarterly.

(ii) Such vulnerability testing shall include automated vulnerability scanning, which shall follow generally accepted best practices.

(iii) A designated contract market shall conduct vulnerability testing by engaging independent contractors or by using employees of the designated contract market who are not responsible for development or operation of the systems or capabilities being tested.

(3) *External penetration testing.* A designated contract market shall conduct external penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.

(i) A designated contract market shall conduct such external penetration testing at a frequency determined by an appropriate risk analysis. At a minimum, a covered designated contract market shall conduct such external penetration testing no less frequently than annually.

(ii) A covered designated contract market shall engage independent contractors to conduct the required annual external penetration test. The covered designated contract market may conduct other external penetration testing by using employees of the covered designated contract market who are not responsible for development or operation of the systems or capabilities being tested.

(iii) A designated contract market which is not a covered designated contract market shall conduct external penetration testing by engaging independent contractors or by using employees of the designated contract market who are not responsible for development or operation of the systems or capabilities being tested.

(4) *Internal penetration testing.* A designated contract market shall conduct internal penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.

(i) A designated contract market shall conduct such internal penetration testing at a frequency determined by an appropriate risk analysis. At a minimum, a covered designated contract market shall conduct such internal penetration testing no less frequently than annually.

(ii) A designated contract market shall conduct internal penetration testing by engaging independent contractors, or by using employees of the designated contract market who are not responsible for development or operation of the systems or capabilities being tested.

(5) *Controls testing.* A designated contract market shall conduct controls testing of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.

(i) A designated contract market shall conduct controls testing, which includes testing of each control included in its program of risk analysis and oversight, at a frequency determined by an appropriate risk analysis. Such testing may be conducted on a rolling basis. At a minimum, a covered designated contract market shall conduct testing of its key controls no less frequently than every three years. The covered designated contract market may conduct testing of its key controls on a rolling basis over the course of three years or the period determined by such risk analysis, whichever is shorter.

(ii) A covered designated contract market shall engage independent contractors to test and assess the key controls included in its program of risk analysis and oversight no less frequently than every three years. The covered designated contract market may conduct any other controls testing required by this section by using independent contractors or employees of the covered designated contract market who are not responsible for development or operation of the systems or capabilities being tested.

(iii) A designated contract market which is not a covered designated contract market shall conduct controls testing by engaging independent contractors or by using employees of the designated contract market who are not responsible for development or operation of the systems or capabilities being tested.

(6) *Security incident response plan testing.* A designated contract market shall conduct security incident response plan testing sufficient to satisfy the requirements set forth in paragraph (k) of this section.

(i) A designated contract market shall conduct such security incident response plan testing at a frequency determined by an appropriate risk analysis. At a minimum, a covered designated contract market shall conduct such security incident response plan testing no less frequently than annually.

(ii) A designated contract market's security incident response plan shall include, without limitation, the designated contract market's definition and classification of security incidents, its policies and procedures for reporting security incidents and for internal and external communication and information sharing regarding security incidents, and the hand-off and escalation points in its security incident response process.

(iii) A designated contract market may coordinate its security incident response plan testing with other testing required by this section or with testing of its other business continuity-disaster recovery and crisis management plans.

(iv) A designated contract market may conduct security incident response plan testing by engaging independent contractors or by using employees of the designated contract market.

(7) *Enterprise technology risk assessment.* A designated contract market shall conduct enterprise technology risk assessment of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.

(i) A designated contract market shall conduct an enterprise technology risk assessment at a frequency determined by an appropriate risk analysis. At a minimum, a covered designated contract market shall conduct an enterprise technology risk assessment no less frequently than annually. A designated contract market that has conducted an enterprise technology risk assessment that complies with this section may conduct subsequent assessments by updating the previous assessment.

(ii) A designated contract market may conduct enterprise technology risk assessments by using independent contractors or employees of the designated contract market who are not responsible for development or operation of the systems or capabilities being assessed.

(i) To the extent practicable, a designated contract market shall:

* * * * *

(k) *Scope of testing and assessment.* The scope for all system safeguards testing and assessment required by this part shall be broad enough to include the testing of automated systems and controls that the designated contract market's required program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable an intruder or unauthorized user or insider to:

(1) Interfere with the designated contract market's operations or with fulfillment of its statutory and regulatory responsibilities;

(2) Impair or degrade the reliability, security, or adequate scalable capacity of the designated contract market's automated systems;

(3) Add to, delete, modify, exfiltrate, or compromise the integrity of any data related to the designated contract market's regulated activities; or

(4) Undertake any other unauthorized action affecting the designated contract market's regulated activities or the hardware or software used in connection with those activities.

(l) *Internal reporting and review.* Both the senior management and the Board of Directors of a designated contract market shall receive and review reports setting forth the results of the testing and assessment required by this section. A designated contract market shall establish and follow appropriate procedures for the remediation of issues identified through such review, as provided in paragraph (m) of this section, and for evaluation of the effectiveness of testing and assessment protocols.

(m) *Remediation.* A designated contract market shall identify and document the vulnerabilities and deficiencies in its systems revealed by the testing and assessment required by this section. The designated contract market shall conduct and document an appropriate analysis of the risks presented by such vulnerabilities and deficiencies, to determine and document whether to remediate or accept the associated risk. When the designated contract market determines to remediate a vulnerability or deficiency, it must remediate in a timely manner given the nature and magnitude of the associated risk.

(n) *Required production of annual total trading volume.* (1) As used in this paragraph, *annual total trading volume* means the total number of all contracts traded on or pursuant to the rules of a designated contract market during a calendar year.

(2) Each designated contract market shall provide to the Commission for calendar year 2015 and each calendar year thereafter its annual total trading volume, providing this information for 2015 within 30 calendar days of the effective date of the final version of this rule, and for 2016 and subsequent years by January 31 of the following calendar year. For calendar year 2015 and each calendar year thereafter, the Commission shall provide to each designated contract market the percentage of the combined annual total trading volume of all designated contract markets regulated by the Commission which is constituted by that designated contract market's annual total trading volume, providing this information for 2015 within 60 calendar days of the effective date of the final version of this rule, and for 2016 and subsequent years by February 28 of the following calendar year.

PART 49—SWAP DATA REPOSITORIES

■ 6. The authority citation for part 49 continues to read as follows:

Authority: 7 U.S.C. 12a and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010), unless otherwise noted.

■ 7. In § 49.24, revise paragraphs (b), (c), (d), (i), (j), and paragraph (k) introductory text and add paragraphs (l), (m), and (n) to read as follows:

§ 49.24 System Safeguards.

* * * * *

(b) A swap data repository's program of risk analysis and oversight with respect to its operations and automated systems shall address each of the following categories of risk analysis and oversight:

(1) *Enterprise risk management and governance.* This category includes, but is not limited to: Assessment, mitigation, and monitoring of security and technology risk; security and technology capital planning and investment; board of directors and management oversight of technology and security; information technology audit and controls assessments;

remediation of deficiencies; and any other elements of enterprise risk management and governance included in generally accepted best practices.

(2) *Information security.* This category includes, but is not limited to, controls relating to: Access to systems and data (including least privilege, separation of duties, account monitoring and control); user and device identification and authentication; security awareness training; audit log maintenance, monitoring, and analysis; media protection; personnel security and screening; automated system and communications protection (including network port control, boundary defenses, encryption); system and information integrity (including malware defenses, software integrity monitoring); vulnerability management; penetration testing; security incident response and management; and any other elements of information security included in generally accepted best practices.

(3) *Business continuity-disaster recovery planning and resources.* This category includes, but is not limited to: Regular, periodic testing and review of business continuity-disaster recovery capabilities, the controls and capabilities described in paragraph (a), (d), (e), (f), and (k) of this section; and any other elements of business continuity-disaster recovery planning and resources included in generally accepted best practices.

(4) *Capacity and performance planning.* This category includes, but is not limited to: Controls for monitoring the swap data repository's systems to ensure adequate scalable capacity (including testing, monitoring, and analysis of current and projected future capacity and performance, and of possible capacity degradation due to planned automated system changes); and any other elements of capacity and performance planning included in generally accepted best practices.

(5) *Systems operations.* This category includes, but is not limited to: System maintenance; configuration management (including baseline configuration, configuration change and patch management, least functionality, inventory of authorized and unauthorized devices and software); event and problem response and management; and any other elements of system operations included in generally accepted best practices.

(6) *Systems development and quality assurance.* This category includes, but is not limited to: Requirements development; pre-production and regression testing; change management procedures and approvals; outsourcing and vendor management; training in secure coding practices; and any other elements of systems development and quality assurance included in generally accepted best practices.

(7) *Physical security and environmental controls.* This category includes, but is not limited to: Physical access and monitoring; power, telecommunication, and environmental controls; fire protection; and any other elements of physical security and environmental controls included in generally accepted best practices.

(c) In addressing the categories of risk analysis and oversight required under paragraph (b) of this section, a swap data repository shall follow generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of automated systems.

(d) A swap data repository shall maintain a business continuity-disaster recovery plan and business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its duties and obligations as a swap data repository following any disruption of its operations. Such duties and obligations include, without limitation: The duties set forth in § 49.19, and maintenance of a comprehensive audit trail. The swap data repository's business continuity-disaster recovery plan and resources generally should enable resumption of the swap data repository's operations and resumption of ongoing fulfillment of the swap data repository's duties and obligations during the next business day following the disruption. A swap data repository shall update its business continuity-disaster recovery plan and emergency procedures at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually.

* * * * *

(i) As part of a swap data repository's obligation to produce books and records in accordance with §§ 1.31 and 45.2 of this chapter, and § 49.12, a swap data repository shall provide to the Commission the following system safeguards-related books and records, promptly upon the request of any Commission representative:

(1) Current copies of its business continuity-disaster recovery plans and other emergency procedures;

(2) All assessments of its operational risks or system safeguards-related controls;

(3) All reports concerning system safeguards testing and assessment required by this chapter, whether performed by independent contractors or by employees of the swap data repository; and

(4) All other books and records requested by Commission staff in connection with Commission oversight of system safeguards pursuant to the Act or Commission regulations, or in connection with Commission maintenance of a current profile of the swap data repository's automated systems.

(5) Nothing in paragraph (i) of this section shall be interpreted as reducing or limiting in any way a swap data repository's obligation to comply with §§ 1.31 and 45.2 of this chapter, or with § 49.12.

(j) A swap data repository shall conduct regular, periodic, objective testing and review of its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity. It shall also conduct regular, periodic testing and review of its business continuity-disaster recovery capabilities. Such testing and review shall include, without limitation, all of the types of testing set forth in this paragraph.

(1) *Definitions.* As used in this paragraph (j):

Controls means the safeguards or countermeasures employed by the swap data repository in order to protect the reliability, security, or capacity of its automated systems or the confidentiality, integrity, and availability of its data and information, and in order to enable the swap data repository to fulfill its statutory and regulatory duties and responsibilities.

Controls testing means assessment of the swap data repository's controls to determine whether such controls are implemented correctly, are operating as intended, and are enabling the swap data repository to meet the requirements established by this section.

Enterprise technology risk assessment means a written assessment that includes, but is not limited to, an analysis of threats and vulnerabilities in the context of mitigating controls. An enterprise technology risk assessment identifies, estimates, and prioritizes risks to swap data repository operations or assets, or to market participants, individuals, or other entities, resulting from impairment of the confidentiality, integrity, and availability of data and information or the reliability, security, or capacity of automated systems.

External penetration testing means attempts to penetrate the swap data repository's automated systems from outside the systems' boundaries to identify and exploit vulnerabilities.

Methods of conducting external penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

Internal penetration testing means attempts to penetrate the swap data repository's automated systems from inside the systems' boundaries, to identify and exploit vulnerabilities. Methods of conducting internal penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

Key controls means those controls that an appropriate risk analysis determines are either critically important for effective system safeguards or intended to address risks that evolve or change more frequently and therefore require more frequent review to ensure their continuing effectiveness in addressing such risks.

Security incident means a cyber security or physical security event that actually jeopardizes or has a significant likelihood of jeopardizing automated system operation, reliability, security, or capacity, or the availability, confidentiality or integrity of data.

Security incident response plan means a written plan documenting the swap data repository's policies, controls, procedures, and resources for identifying, responding to, mitigating, and recovering from security incidents, and the roles and responsibilities of its management, staff and independent contractors in responding to security incidents. A security incident response plan may be a separate document or a business continuity-disaster recovery plan section or appendix dedicated to security incident response.

Security incident response plan testing means testing of a swap data repository's security incident response plan to determine the plan's effectiveness, identify its potential weaknesses or deficiencies, enable regular plan updating and improvement, and maintain organizational preparedness and resiliency with respect to security incidents. Methods of conducting security incident response plan testing may include, but are not limited to, checklist completion, walk-through or table-top exercises, simulations, and comprehensive exercises.

Vulnerability testing means testing of a swap data repository's automated systems to determine what information may be discoverable through a reconnaissance analysis of those systems and what vulnerabilities may be present on those systems.

(2) *Vulnerability testing.* A swap data repository shall conduct vulnerability testing of a scope sufficient to satisfy the requirements set forth in paragraph (l) of this section.

(i) A swap data repository shall conduct such vulnerability testing at a frequency determined by an appropriate risk analysis, but no less frequently than quarterly.

(ii) Such vulnerability testing shall include automated vulnerability scanning, which shall follow generally accepted best practices.

(iii) A swap data repository shall conduct vulnerability testing by engaging independent contractors or by using employees of the swap data repository who are not responsible for development or operation of the systems or capabilities being tested.

(3) *External penetration testing.* A swap data repository shall conduct external penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (l) of this section.

(i) A swap data repository shall conduct such external penetration testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually.

(ii) A swap data repository shall engage independent contractors to conduct the required annual external penetration test. The swap data repository may conduct other external penetration testing by using employees of the swap data repository who are not responsible for development or operation of the systems or capabilities being tested.

(4) *Internal penetration testing.* A swap data repository shall conduct internal penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (l) of this section.

(i) A swap data repository shall conduct such internal penetration testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually.

(ii) A swap data repository shall conduct internal penetration testing by engaging independent contractors, or by using employees of the swap data repository who are not responsible for development or operation of the systems or capabilities being tested.

(5) *Controls testing.* A swap data repository shall conduct controls testing of a scope sufficient to satisfy the requirements set forth in paragraph (l) of this section.

(i) A swap data repository shall conduct controls testing, which includes testing of each control included in its program of risk analysis and oversight, at a frequency determined by an appropriate risk analysis. Such testing may be conducted on a rolling basis. A swap data repository shall conduct testing of its key controls no less frequently than every three years. The swap data repository may conduct testing of its key controls on a rolling basis over the course of three years or the period determined by such risk analysis, whichever is shorter.

(ii) A swap data repository shall engage independent contractors to test and assess the key controls included in its program of risk analysis and oversight no less frequently than every three years. The swap data repository may conduct any other controls testing required by this section by using independent contractors or employees of the swap data repository who are not responsible for development or operation of the systems or capabilities being tested.

(6) *Security incident response plan testing.* A swap data repository shall conduct security incident response plan testing sufficient to satisfy the requirements set forth in paragraph (l) of this section.

(i) A swap data repository shall conduct such security incident response plan testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually.

(ii) A swap data repository's security incident response plan shall include, without limitation, the swap data repository's definition and classification of security incidents, its policies and procedures for reporting security incidents and for internal and external communication and information sharing regarding security incidents, and the hand-off and escalation points in its security incident response process.

(iii) A swap data repository may coordinate its security incident response plan testing with other testing required by this section or with testing of its other business continuity-disaster recovery and crisis management plans.

(iv) A swap data repository may conduct security incident response plan testing by engaging independent contractors or by using employees of the swap data repository.

(7) *Enterprise technology risk assessment.* A swap data repository shall conduct enterprise technology risk assessment of a scope sufficient to satisfy the requirements set forth in paragraph (l) of this section.

(i) A swap data repository shall conduct an enterprise technology risk assessment at a frequency determined by an appropriate risk analysis, but no less frequently than annually. A swap data repository that has conducted an enterprise technology risk assessment that complies with this section may conduct subsequent assessments by updating the previous assessment.

(ii) A swap data repository may conduct enterprise technology risk assessments by using independent contractors or employees of the swap data repository who are not responsible for development or operation of the systems or capabilities being assessed.

(k) To the extent practicable, a swap data repository shall:

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(l) *Scope of testing and assessment.* The scope for all system safeguards testing and assessment required by this part shall be broad enough to include the testing of automated systems and controls that the swap data repository's required program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable an intruder or unauthorized user or insider to:

(1) Interfere with the swap data repository's operations or with fulfillment of its statutory and regulatory responsibilities;

(2) Impair or degrade the reliability, security, or adequate scalable capacity of the swap data repository's automated systems;

(3) Add to, delete, modify, exfiltrate, or compromise the integrity of any data related to the swap data repository's regulated activities; or

(4) Undertake any other unauthorized action affecting the swap data repository's regulated activities or the hardware or software used in connection with those activities.

(m) *Internal reporting and review.* Both the senior management and the Board of Directors of a swap data repository shall receive and review reports setting forth the results of the testing and assessment required by this section. A swap data repository shall establish and follow appropriate procedures for the remediation of issues identified through such review, as provided in paragraph (n) of this section, and for evaluation of the effectiveness of testing and assessment protocols.

(n) *Remediation.* A swap data repository shall identify and document the vulnerabilities and deficiencies in its systems revealed by the testing and assessment required by this section. The swap data repository shall conduct and document an appropriate analysis of the risks presented by such vulnerabilities and deficiencies, to determine and document whether to remediate or accept the associated risk. When the swap data repository determines to remediate a vulnerability or deficiency, it must remediate in a timely manner given the nature and magnitude of the associated risk.

Issued in Washington, DC, on September 9, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to System Safeguards Testing Requirements—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

I strongly support the two rules the Commission has finalized today.

The risk of cyberattack probably represents the single greatest threat to the stability and integrity of our markets today. Instances of cyberattacks are all too familiar both inside and outside the financial sector. Today, they often are motivated not just by those with a desire to profit, but by those with a desire deliberately to disrupt or destabilize orderly operations.

That is why these system safeguard rules are so important. The rules we have finalized today will apply to the core infrastructure in our markets—the exchanges, clearinghouses, trading platforms, and trade repositories. And they will ensure that those private companies are regularly evaluating cyber risks and testing their cybersecurity and operational risk defenses. While our rules already require this generally, the measures we approved today add greater definition—not by being overly prescriptive, but by setting some principles-based standards, and requiring specific types of testing, all rooted in industry best practices.

I've said many times that as regulators, we must not just look backwards to address the causes of past failures or crises. We also must look ahead—ahead to the new opportunities and challenges facing our markets. Financial markets constantly evolve, and we must ensure our regulatory framework is adapting to these changes.

These new rules are one good example of how we are looking ahead and addressing these new challenges. They will serve as a strong and important complement to the many other steps being taken by regulators and market participants to address cybersecurity. For example, government agencies and market participants are already working together to share information about potential threats and risks—and learn from one another.

I want to thank all those who provided feedback on the proposed rules the Commission approved last December. We received a number of thoughtful comments from market participants, most of which expressed broad support for the proposals. Commenters also highlighted some areas of concern, and we made adjustments based on that feedback. For example, we have reduced the frequency of controls testing and narrowed the instances where independent contractor testing is required. We have also clarified definitions of key terms, and made clear that the scope of required testing will be based on appropriate risk and threat analysis.

I also thank Commission staff for their hard work on these measures, particularly our staff in the Division of Market Oversight and Division of Clearing and Risk, as well as the support that is always provided by staff in the Office of General Counsel, the Office of Chief Economist and other staff who comment on the rules. I also thank my fellow Commissioners Bowen and Giancarlo for their support of and suggestions regarding these final rules.

Appendix 3—Concurring Statement of Commissioner Sharon Y. Bowen

I will be voting yes on both systems safeguards rules. There is not much more to say than what I said when these rules were proposed on December 10, 2015.[1] Cybersecurity is a top concern for American companies, especially financial firms. These rules are a good step forward in addressing these concerns.

As I noted when they were proposed, there are many aspects of these proposals that I like:

First, they set up a comprehensive testing regime by: (a) Defining the types of cybersecurity testing essential to fulfilling system safeguards testing obligations, including vulnerability testing, penetration testing, controls testing, security incident response plan testing, and enterprise technology risk assessment; (b) requiring internal reporting and review of testing results; and (c) mandating remediation of vulnerabilities and deficiencies. Further, for certain significant entities, based on trading volume, it requires heightened measures such as minimum frequency requirements for conducting certain testing, and specific requirements for the use of independent contractors.

Second, there is a focus on governance—requiring, for instance, that firms' Board of Directors receive and review all reports setting forth the results of all testing. And third, these rulemakings are largely based on well-regarded, accepted best practices for cybersecurity, including The National Institute of Standards and Technology Framework for Improving Critical

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[1] Concurring Statement of Commissioner Sharon Y. Bowen Regarding Notice of Proposed Rulemaking on System Safeguards Testing Requirements (Dec. 10, 2015), *available at http://www.cftc.gov/PressRoom/SpeechesTestimony/bowenstatement121615b.*

Infrastructure Cybersecurity ("NIST Framework").[2]

I was also an early proponent of including all registered entities, including SEFs, in this rule. I am glad to see them included, and look forward to the staff roundtable to discuss how to apply heightened standards to the significant SEFs. Thank you and I look forward to the staff's presentation.

[FR Doc. 2016–22174 Filed 9–16–16; 8:45 am]

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[2] *Id. See also* NIST Framework, Subcategory PR.IP–10, at 28, and Category DE.DP, at 31, *available at http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf.*

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Monday,
No. 181 September 19, 2016

Part III

Commodity Futures Trading Commission

17 CFR Part 39
System Safeguards Testing Requirements for Derivatives Clearing Organizations; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AE29

System Safeguards Testing Requirements for Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting enhanced requirements for testing by a derivatives clearing organization ("DCO") of its system safeguards, as well as additional amendments to reorder and renumber certain paragraphs within the regulations and make other minor changes to improve the clarity of the rule text.

DATES: *Effective date:* This rule is effective September 19, 2016.

Compliance dates: DCOs must comply with § 39.18(e)(2) and (6) by March 20, 2017; § 39.18(e)(3) through (5), and (7) by September 19, 2017; and all other provisions of § 39.18 by September 19, 2016.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Deputy Director, 202–418–5096, *edonovan@cftc.gov,* Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; or Julie A. Mohr, Deputy Director, (312) 596–0568, *jmohr@cftc.gov;* Tad Polley, Associate Director, (312) 596–0551, *tpolley@cftc.gov;* or Scott Sloan, Attorney-Advisor, (312) 596–0708, *ssloan@cftc.gov,* Division of Clearing and Risk, Commodity Futures Trading Commission, 525 West Monroe Street, Chicago, Illinois 60661.

SUPPLEMENTARY INFORMATION:

I. Background

A. System Safeguards Requirements for DCOs

Section 5b(c)(2) of the Commodity Exchange Act ("CEA") [1] sets forth core principles with which a DCO must comply in order to be registered and to maintain registration with the Commission. In November 2011, the Commission adopted regulations [2] to establish standards for compliance with the core principles, including Core Principle I, which concerns a DCO's system safeguards.[3] In 2013, the Commission adopted additional standards, including additional system safeguards requirements,[4] for compliance with the core principles for systemically important DCOs ("SIDCOs") and DCOs that elect to opt-in to the SIDCO regulatory requirements ("Subpart C DCOs").[5]

Regulation 39.18 implements Core Principle I and, among other things, specifies: (1) The requisite elements, standards, and resources of a DCO's program of risk analysis and oversight with respect to its operations and automated systems; (2) the requirements for a DCO's business continuity and disaster recovery plan, emergency procedures, and physical, technological, and personnel resources described therein; (3) the responsibilities, obligations, and recovery time objective of a DCO following a disruption of its operations; and (4) other system safeguards requirements related to reporting, recordkeeping, testing, and coordination with a DCO's clearing members and service providers.

On December 23, 2015, the Commission proposed to enhance its system safeguards requirements for DCOs by revising § 39.18 to require specific types of testing, and specifying the minimum frequency with which such testing must be performed. The Commission also proposed additional amendments to reorder and renumber certain paragraphs and make other minor changes to improve the clarity of the rule text, as well as corresponding technical corrections to § 39.34 (the "Proposal").[6]

The comment period for the Proposal ended on February 22, 2016. The Commission received seven substantive comment letters in response to the Proposal [7] and, in consideration of those comments, is adopting the Proposal subject to certain changes, as noted below.

B. Need for Cybersecurity Testing

In the Proposal, the Commission described the well-documented increase in cyber threats, and the need to enhance its existing requirements for cybersecurity testing in light of this increase.[8] In the current environment, cybersecurity testing is crucial to efforts by exchanges, clearing organizations, swap data repositories, and other entities in the financial sector to strengthen cyber defenses; mitigate operational, reputational, and financial risk; and maintain cyber resilience and the ability to recover from cyber attacks. To maintain the effectiveness of cybersecurity controls, such entities must regularly test their system safeguards in order to find and fix vulnerabilities before an attacker exploits them.

Cybersecurity testing is a well-established best practice generally and for financial sector entities. The National Institute of Standards and Technology ("NIST") Framework for Improving Critical Infrastructure Cybersecurity calls for testing of cybersecurity response and recovery plans and cybersecurity detection processes and procedures.[9] The Financial Industry Regulatory Authority ("FINRA") 2015 Report on Cybersecurity Practices notes that "[r]isk assessments serve as foundational tools for firms to understand the cybersecurity risks they face across the range of the firm's activities and assets," and calls for firms to develop, implement, and test cybersecurity incident response plans.[10] The Federal Financial Institutions Examination Council ("FFIEC"),[11] another important source of cybersecurity best practices for financial sector entities, notes that financial institutions should have a testing plan that identifies control objectives; schedules tests of the controls used to meet those objectives; ensures prompt corrective action where deficiencies are identified; and provides independent assurance for compliance with security policies.[12]

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[1] 7 U.S.C. 7a–1.

[2] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334 (Nov. 8, 2011) (codified at 17 CFR part 39).

[3] Core Principle I requires a DCO to: (1) Establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk; (2) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of the DCO's operations and the fulfillment of each of its obligations and responsibilities; and (3) periodically conduct tests to verify that the DCO's backup resources are sufficient.

[4] 17 CFR 39.34.

[5] Derivatives Clearing Organizations and International Standards, 78 FR 72476 (Dec. 2, 2013) (codified at 17 CFR part 39).

[6] *See* System Safeguards Testing Requirements for Derivatives Clearing Organizations; Proposed Rule, 80 FR 80114 (Dec. 3, 2015) (to be codified at 17 CFR part 39).

[7] All comment letters are available through the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1649.* The Commission received comments from the following parties: Intercontinental Exchange, Inc.; NGX; The Options Clearing Corporation; Minneapolis Grain Exchange; North American Derivatives Exchange; LCH.Clearnet Group; and CME Group, Inc.

[8] 80 FR 80114, at 80114–80115.

[9] NIST, *Framework for Improving Critical Infrastructure Cybersecurity, Feb. 2014, v. 1, Subcategory PR.IP–10, p. 28, and Category DE.DP, p. 31, available at: http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf.*

[10] FINRA, *Report on Cybersecurity Practices,* Feb. 2015 ("FINRA Report"), pp. 1–2, available at: *https://www.finra.org/sites/default/files/p602363%20Report%20on%20Cybersecurity%20Practices_0.pdf.*

[11] The FFIEC includes the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, the National Credit Union Administration, and the State Liaison Committee of the Conference of State Bank Supervision.

The Commission notes that § 39.18(j)(1)(i) currently requires DCOs to conduct regular, periodic, and objective testing and review of their automated systems to ensure that these systems are reliable, secure, and have adequate scalable capacity. This requirement must be satisfied by following, at a minimum, generally accepted standards and industry best practices. The final rule being adopted by the Commission herein clarify these requirements by identifying particular types of testing required by relevant generally accepted standards and industry best practices. The Commission is requiring that independent contractors conduct certain testing and specifying a minimum frequency for each testing type, but otherwise is not changing the regulatory requirement for DCOs as it exists today. The additional clarity provided by the specific testing and frequency requirements as well as the independent contractor requirements will help DCOs increase their cyber resiliency and operate in a safe and efficient manner.

II. Comments on the Notice of Proposed Rulemaking

A. Vulnerability Testing

Proposed § 39.18(a) would define "vulnerability testing" as testing of a DCO's automated systems to determine what information may be discoverable through a reconnaissance analysis of those systems and what vulnerabilities may be present on those systems. Proposed § 39.18(e)(2) would require the testing to be of a scope sufficient to satisfy the testing scope requirements of proposed § 39.18(e)(8). Proposed § 39.18(e)(2)(i) would require a DCO to conduct vulnerability testing at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than quarterly. Under proposed § 39.18(e)(2)(ii), the vulnerability tests would have to include automated vulnerability scanning, which would have to be conducted on an authenticated basis where indicated by an appropriate risk analysis. Proposed § 39.18(e)(2)(iii) would require a DCO to engage independent contractors to conduct two of the required quarterly tests each year. The other vulnerability tests could be conducted by employees of the DCO who are not responsible for development or operation of the systems or capabilities being tested.

1. Frequency

CME Group, Inc. ("CME") supported the proposed frequency for the required vulnerability testing. CME stated that testing on at least a quarterly basis is likely an appropriate frequency for most organizations for their most critical assets. Intercontinental Exchange, Inc. ("ICE") supported a quarterly requirement, but believes that DCOs that meet the quarterly requirement should not be subject to a formal risk assessment to potentially determine a higher testing frequency as the Commission has not provided evidence that a higher frequency is warranted.

Minneapolis Grain Exchange ("MGEX") stated that frequency of testing should be determined by the frequency of system changes and the scope of exposure, and should not be reduced to a static minimum. NGX stated that quarterly vulnerability testing is too costly for smaller DCOs, and should be required semi-annually instead.

The Commission does not believe it is prudent to change the frequency requirement for vulnerability tests. The requirement to conduct vulnerability tests at a frequency based on a risk analysis and at least quarterly is based on industry standards[13] and will help ensure that DCOs are responsive to new vulnerabilities as they arise.

2. Risk Assessment

North American Derivatives Exchange, Inc. ("Nadex") stated that the rule should be clarified to provide that the expected level of detail contained in the risk analysis used to determine the required frequency of overall testing should be based on what is considered reasonable in the industry. The Commission does not believe a clarification is necessary because the rule as proposed is appropriately based on industry standards.[14]

3. Authenticated Scanning

ICE argued that the Commission should eliminate the authenticated vulnerability scanning requirement on the basis that it will increase the cost and time of a scan, increase risk by requiring an operating system login to be created and maintained on a new system, and increase the quantity of findings, potentially diluting and obscuring important results.

The Commission agrees with ICE that an explicit requirement for authenticated scanning should be removed from the regulation. Therefore, the Commission is revising proposed § 39.18(e)(2)(ii) as follows (added text in italics), "Such vulnerability testing shall include automated vulnerability scanning, *which shall follow generally accepted best practices.*" The regulation as adopted thus only requires authenticated scanning to the extent it is required by industry standards.

4. Independence Requirements

Several DCOs did not support the independent contractor requirement, arguing that internal teams should be allowed to conduct vulnerability testing. ICE noted that internal parties have the most knowledge and experience with the systems.

CME, ICE, and MGEX argued that there are inherent risks in providing outside parties access to critical systems and sensitive information. Specifically, MGEX stated that it is concerned about the breadth and volume of proprietary information that vendors would have access to in order to perform the testing required, because having vast quantities of industry information in the hands of vendors may actually cause greater risk of harm as vendors may be at greater risk of a cyber incident.

ICE, LCH.Clearnet Group ("LCH"), The Options Clearing Corporation ("OCC"), and MGEX all noted significant costs associated with hiring outside contractors to conduct vulnerability tests. LCH and MGEX further stated that this requirement is especially burdensome to smaller DCOs.

MGEX opposed the proposed requirement that only independent contractors or employees who are not responsible for development or operation of the systems or capabilities being tested may conduct vulnerability testing. Specifically, MGEX stated that smaller organizations like itself may not have qualified individuals outside of the IT department who would have the needed background and skills while also having the level of independence which the Commission would require. Therefore, an entity like MGEX would be forced to either bear significant cost to hire dedicated employees exclusively for regulatory testing compliance or bear significant cost to have independent contractors perform all four tests.

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[12] *See* FFIEC, *E-Banking Booklet: IT Examination Handbook,* Aug. 2003, p. 30, available at: *http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_E-Banking.pdf.*

[13] *See* NIST Special Publication 800–39, Managing Information Security Risk, Mar. 2011 ("NIST SP 800–39"), pp. 47–48, available at: *http://csrc.nist.gov/publications/nistpubs/800-39/SP800-39-final.pdf;* Security Standards Council, Payment Card Industry Data Security Standards, Apr. 2016, v. 3.2 ("PCI–DSS"), p. 98, available at: *https://www.pcisecuritystandards.org/documents/PCI_DSS_v3-2.pdf;* FFIEC, Information Security Booklet, IT Examination Handbook, July 2006 ("FFIEC Handbook"), p. 82, available at: *http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_InformationSecurity.pdf.*

[14] *See* FFIEC Handbook, *supra* note 13, at 82.

OCC believes that requiring a DCO to use an independent contractor to perform vulnerability testing during the same year that such person is performing external penetration testing would unnecessarily increase costs without an added benefit, because vulnerability testing is largely subsumed within external penetration testing.

As explained in the Proposal, the Commission believes it is important that vulnerability testing be conducted from the perspective of an outsider, and as a result does not agree with MGEX that internal employees responsible for development or operation of the tested systems or capabilities should be permitted to conduct the tests. The Commission agrees with various commenters, however, that the regulation should permit but not require a DCO to use independent contractors to conduct the required vulnerability testing. As a result, the Commission is revising proposed § 39.18(e)(2)(iii) as follows (added text in italics), "A derivatives clearing organization shall *conduct vulnerability testing by engaging* independent contractors, *or* by using employees of the derivatives clearing organization who are not responsible for development or operation of the systems or capabilities being tested." This revision aligns the regulation more closely with industry standards, which call for vulnerability testing to be conducted by independent employees while recognizing the benefits and potential risks of engaging independent contractors.[15]

B. External Penetration Testing

Proposed § 39.18(a) would define "external penetration testing" as "attempts to penetrate a [DCO's] automated systems from outside the systems' boundaries to identify and exploit vulnerabilities," and proposed § 39.18(e)(3) would require the testing to be of a scope sufficient to satisfy the testing scope requirements of proposed § 39.18(e)(8). Proposed § 39.18(e)(3)(i) would require a DCO to conduct external penetration testing at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually. The proposed rule would also provide that independent contractors must perform the required annual external penetration test on behalf of the DCO. However, other external penetration testing could be performed by appropriately qualified DCO employees not responsible for development or operation of the systems or capabilities being tested.

ICE and Nadex supported requiring external penetration testing as a part of a DCO's program of risk analysis and oversight. OCC generally supported external penetration testing by independent third parties. ICE and CME supported performing the testing annually.

ICE suggested that the Commission should amend the definition of "external penetration testing" to include specific types of testing. The Commission is declining to do so. Requiring specific tests would be overly prescriptive and could stifle the development of new, more advanced testing methods. Accordingly, upon review of the comments, the Commission is adopting § 39.18(e)(3) and the definition of "external penetration testing" as proposed.

C. Internal Penetration Testing

Proposed § 39.18(a) would define "internal penetration testing" as "attempts to penetrate a [DCO's] automated systems from inside the systems' boundaries to identify and exploit vulnerabilities." Proposed § 39.18(e)(4) would require the testing to be of a scope sufficient to satisfy the testing scope requirements of proposed § 39.18(e)(8). Proposed § 39.18(e)(4)(i) would require a DCO to conduct internal penetration testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually. The test could be conducted by independent contractors, or by appropriately qualified DCO employees not responsible for development or operation of the systems or capabilities being tested.

ICE and Nadex supported requiring internal penetration testing as a part of a DCO's program of risk analysis and oversight.

ICE suggested that the Commission should amend the definition of "internal penetration testing" to include specific types of testing. As with external penetration testing, the Commission is declining to require specific forms of internal penetration tests. Requiring specific tests would be overly prescriptive and could stifle the development of new, more advanced testing methods.

CME stated that DCOs may find it challenging to recruit and retain employees capable of conducting internal penetration testing without introducing unnecessary risks into production and other sensitive environments, because there is a scarcity of qualified professionals with those skills. As a result, CME argued the Commission should clarify that conducting annual internal penetration tests should be an objective, and not a strict requirement, so that DCOs can prioritize effective testing done by independent employees over conducting testing at least annually simply to comply with a prescriptive testing frequency requirement. ICE stated that the Commission should be silent on parameters for voluntary internal testing, allowing each DCO to determine its own methodology for such testing.

The Commission disagrees with CME's suggestion that internal penetration testing should be merely an objective. The requirement for internal penetration testing is based on industry standards.[16] In addition, because the regulation provides sufficient flexibility regarding the individuals who are permitted to conduct the internal penetration tests, the Commission does not believe a change to the regulation based on CME's comment is necessary. In response to ICE's comment regarding voluntary internal testing, the Commission notes that the final rule does not impose any requirements on testing DCOs conduct on a voluntary basis, beyond the requirements of the regulation. Therefore, the Commission declines to make any changes in response to these comments and confirms that final § 39.18(e)(4) sets forth requirements rather than objectives or a voluntary program.

MGEX stated that the required frequency of testing should be determined by the frequency of systems changes and the scope of exposure, and should not be reduced to a static minimum. The Commission declines to amend the regulation in response to MGEX's comment, and notes that that the frequency requirement in final § 39.18(e)(4)(i) is based on industry standards and is not overly prescriptive.[17]

Accordingly, upon review of the comments, the Commission is adopting § 39.18(e)(4) and the definition of

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[15] FFIEC Handbook, *supra* note 13, at 81 (calling for such tests to be performed "by individuals who are also independent of the design, installation, maintenance, and operation of the tested system"); NIST Special Publication 800–115, Technical Guide to Information Security Testing and Assessment, Sept. 2008 ("NIST SP 800–115"), p. 6–6, available at: *http://csrc.nist.gov/publications/nistpubs/800-115/SP800-115.pdf* (recognizing the benefits and risks of engaging third parties to conduct testing).

[16] *See* NIST SP 800–115, *supra* note 15, at 2–5.

[17] *See id.*; FFIEC Handbook, *supra* note 13, at 82.

"internal penetration testing" as proposed.

D. Controls Testing

Proposed § 39.18(a) would define "controls testing" as an assessment of the DCO's controls to determine whether such controls are implemented correctly, are operating as intended, and are enabling the DCO to meet the requirements of § 39.18. Proposed § 39.18(e)(5) would require such testing to be of a scope sufficient to satisfy the testing scope requirements of proposed § 39.18(e)(8). Proposed § 39.18(e)(5)(i) would require a DCO to conduct controls testing, which includes testing of each control included in its program of risk analysis and oversight, at a frequency determined by an appropriate risk analysis, but no less frequently than every two years.

Pursuant to proposed § 39.18(e)(5)(ii), a DCO would be required to engage independent contractors to test and assess its "key controls," which would be defined in proposed § 39.18(a) as controls that an appropriate risk analysis determines are either critically important for effective system safeguards or intended to address risks that evolve or change more frequently and therefore require more frequent review to ensure their continuing effectiveness in addressing such risks. A DCO may conduct any other non-key controls testing by using independent contractors or employees of the DCO who are not responsible for development or operation of the systems or capabilities being tested.

CME and Nadex supported requiring controls testing as a part of a DCO's program of risk analysis and oversight.

ICE recommended that the Commission remove the controls testing requirements and the definition of "key controls." ICE stated that attempting to mandate controls testing will result in inconsistent and confused implementation, distract from useful security activity, and generate a superset of results that are already published in a more focused fashion through vulnerability, external penetration, internal penetration, or security response plan testing. Moreover, ICE believes that the proposed controls testing requirements are already adequately addressed in existing rules, both in the U.S. and globally, and through current examination coverage. ICE added that the concept of a key control is not universally adopted, and that the goal is not to test such controls, but to eliminate reliance on them. ICE believes that the key controls proposal imposes a large burden for little to no practical improvement in security.

Despite ICE's comments, the Commission is adopting the controls testing requirement, which is based on industry standards.[18] The Commission continues to believe that regular, ongoing testing of all of an organization's system safeguards-related controls is a crucial part of a DCO's risk analysis and oversight program. As NIST notes, the results of such testing can allow organizations to, among other things, identify potential cybersecurity problems or shortfalls, identify security-related weaknesses and deficiencies, prioritize risk mitigation decisions and activities, confirm that weaknesses and deficiencies have been addressed, and inform related budgetary decisions and capital investment.[19] The Commission notes that the definition of "key controls" provides adequate flexibility for a DCO to determine which of its controls constitute key controls. While ICE believes that the goal should be to eliminate reliance on key controls, the Commission believes that so long as DCOs continue to rely on them, it is crucial for DCOs to test their effectiveness.

1. Frequency

CME and OCC stated that the costs of requiring controls testing every two years outweigh the benefits. CME stated that DCOs should be able to test in line with their risk analysis, which may result in a cycle of longer than two years. CME stated that a three-year cycle requirement would be more appropriate.

OCC agreed with the proposed testing frequency as applied to key controls. However, OCC stated that, consistent with relevant industry best practices, the Commission should alternatively consider permitting a DCO to determine the frequency of controls testing based on the level of risk a control is determined to present following an appropriate controls risk analysis.

The Commission agrees with CME and OCC that requiring controls testing no less frequently than every two years is not necessary. The Commission further agrees with CME that three years is a more appropriate minimum requirement and is revising proposed § 39.18(e)(5)(i) as follows (added text in italics), "A [DCO] shall conduct controls testing, which includes testing of each control included in its program of risk analysis and oversight, at a frequency determined by an appropriate risk analysis, but *shall test and assess key controls* no less frequently than every *three* years. A [DCO] may conduct such testing on a rolling basis over the course of the *required* period." The final rule would thus require key controls testing to occur at least every three years rather than every two and would not prescribe a minimum frequency for testing of non-key controls. The Commission reiterates, however, that if a DCO's risk analysis indicates a key control should be tested more frequently than every three years, the DCO must comply with the shorter testing frequency. The changes would further clarify that both key controls and non-key controls can be tested on a rolling basis over the applicable time period.

2. Independence Requirements

CME stated that requiring non-employee independent contractors to test key controls, without involvement by employees, may not provide the most effective or efficient means for continued key controls testing and enhancement. CME also stated that internal audit staff can provide a strong and independent third line of defense where the department is independent from management, objective in its findings, professional, and able to have free and unlimited access to the books, records, and people of a company. CME further stated that while involving external resources may be beneficial, doing so should not exclude participation by employees not involved in the development or operation of the controls, systems, or capabilities being tested.

OCC recommended that DCOs be permitted to use independent contractors or independent employees to test and assess the effectiveness of key controls because, in contrast to penetration testing, key controls testing does not require specialized expertise. Moreover, OCC believes independent employees are more knowledgeable about the DCO's business, risk profile, and control environment generally, making them better positioned to perform effective testing of key controls. OCC suggests that, at a minimum, the Commission should make clear that whenever an independent contractor is used to perform testing, the independent contractor is not required to work in isolation but rather alongside independent employees of the DCO.

The Commission believes that independent testing provides critical impartiality and credibility, and notes that generally accepted best practices recognize the benefits of using independent contractors.[20] The Commission is clarifying, however, that when a DCO must engage independent contractors to conduct key controls testing, those independent contractors may consult with independent employees of the DCO when conducting the required testing so long as they produce an independent report.

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[18] *See,* NIST Special Publication 800–53, Security and Privacy Controls for Federal Information Systems and Organizations, rev. 4 ("NIST SP 800–53"), pp. app. F–CA at F–55, available at: *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf.*; FFIEC Handbook, *supra* note 13, at 12.

[19] NIST Special Publication 800–53A, Assessing Security and Privacy Controls in Federal Information Systems and Organizations, rev. 4 ("NIST SP 800–53A"), p. 3, available at: *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53Ar4.pdf.*

Based on the changes to proposed § 39.18(e)(5)(i), the Commission is revising proposed § 39.18(e)(5)(ii) in part as follows (added text in italics), "A [DCO] shall engage independent contractors to test and assess the key controls included in the [DCO]'s program of risk analysis and oversight no less frequently than every *three* years." The regulation as finalized would thus require a DCO to engage independent contractors to test each key control at least every three years. If, however, a DCO's risk analysis concludes that certain key controls must be tested more frequently than every three years, the resulting additional tests may be conducted by independent contractors or employees of the DCO who are not responsible for development or operation of the systems or capabilities being tested.

E. Security Incident Response Plan Testing

Proposed § 39.18(a) would define "security incident response plan testing" as testing of a DCO's security incident response plan to determine the plan's effectiveness, identifying its potential weaknesses or deficiencies, enabling regular plan updating and improvement, and maintaining organizational preparedness and resiliency with respect to security incidents. Methods of conducting security incident response plan testing would include, but not be limited to, checklist completion, walk-through or table-top exercises, simulations, and comprehensive exercises.

Proposed § 39.18(e)(6)(i) would require a DCO to conduct the testing at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually. Proposed § 39.18(e)(6)(ii) would require the DCO's security incident response plan to include, without limitation, the DCO's definition and classification of security incidents, its policies and procedures for reporting security incidents and for internal and external communication and information sharing regarding security incidents, and the hand-off and escalation points in its security incident response process. Proposed § 39.18(e)(6)(iii) would also permit the DCO to coordinate its security incident response plan testing with other testing required by the regulation or with testing of its other business continuity-disaster recovery and crisis management plans. Moreover, proposed § 39.18(e)(6)(iv) would permit the DCO to conduct security incident response plan testing by engaging independent contractors or by using employees who are not responsible for development or operation of the systems or capabilities being tested.

CME, ICE, and Nadex supported requiring security incident response plan testing as a part of a DCO's program of risk analysis and oversight. CME stated that employees responsible for incident response, who would not be responsible for the development or operation of the functional systems or capabilities being tested, should be permitted to both design a DCO's plan and be responsible for testing the plan. CME stated that a DCO should be able to leverage its employees with expertise in crisis and risk management, and incident response and planning, for both planning and testing purposes.

The Commission agrees with CME that the employees who develop a security incident response plan should be permitted to test the plan. To allow DCOs additional flexibility regarding security incident response plan testing, the Commission is revising proposed § 39.18(e)(6)(iv) by deleting "who are not responsible for development or operation of the systems or capabilities being tested." This revision allows security incident response plan testing to be conducted by either independent contractors or employees, without restricting which employees may lead or conduct the testing.

OCC noted that under the proposed rules, "security incident" is defined as "a cybersecurity or physical security event that actually or potentially jeopardizes automated system operation, reliability, security, or capacity, or the availability, confidentiality or integrity of data." OCC argued that the inclusion of the term "potentially" renders the definition vague, and could be interpreted to include most, if not all, cybersecurity events experienced by a DCO. OCC suggested that the Commission revise its definition to either: (i) Defer to the DCO's definition as set forth in its risk analysis plan; or (ii) replace "potentially jeopardizes" with "has a significant likelihood of jeopardizing."

The Commission recognizes OCC's concern and is amending the proposed definition of "security incident" as follows (added text in italics), "Security incident means a cybersecurity or physical security event that actually *jeopardizes* or *has a significant likelihood of jeopardizing* automated system operation, reliability, security, or capacity, or the availability, confidentiality or integrity of data." This change provides additional clarity regarding which cybersecurity events are considered a security incident for the purposes of the regulation.

F. Enterprise Technology Risk Assessment

Proposed § 39.18(a) would define an "enterprise technology risk assessment" as a written assessment that includes, but is not limited to, an analysis of threats and vulnerabilities in the context of mitigating controls. Proposed § 39.18(a) would also provide that an enterprise technology risk assessment identifies, estimates, and prioritizes risks to a DCO's operations or assets, or to market participants, individuals, or other entities, resulting from impairment of the confidentiality, integrity, or availability of data and information or the reliability, security, or capacity of automated systems.

Proposed § 39.18(e)(7) would require such assessment to be of a scope sufficient to satisfy the requirements of proposed § 39.18(e)(8). Proposed § 39.18(e)(7)(i) would require DCOs to conduct an enterprise technology risk assessment at a frequency determined by an appropriate risk analysis, but no less frequently than annually. Proposed § 39.18(e)(7)(ii) would permit a DCO to use independent contractors or employees of the DCO not responsible for development or operation of the systems or capabilities being assessed to conduct an enterprise technology risk assessment.

Nadex requested that the Commission clarify whether information related to the enterprise technology risk assessment could be combined with the regular testing results presented to management and the board of directors based on the internal reporting and review requirements.

In response to Nadex's comment, the Commission is clarifying that the information required under the regulation can be presented to management and the board of directors in the manner each DCO deems appropriate, including by presenting it together with other information DCOs must provide to management and the board of directors.

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[20] NIST SP 800–115, *supra* note 15, at 6–6 (NIST also notes that giving outsiders access to an organization's systems can introduce additional risk, and recommends proper vetting and attention to contractual responsibility in this regard); FFIEC Handbook, *supra* note 13, at 81.

1. Frequency

ICE recommended that the Commission not adopt the enterprise technology risk assessment requirements. ICE stated that attempting to mandate enterprise technology risk assessments will result in inconsistent and confused implementation, distract from useful security activity, and generate a superset of results that are already published in a more focused fashion through vulnerability, external penetration, internal penetration or security response plan testing. Moreover, ICE believes that the proposed enterprise technology risk assessment requirements are already adequately addressed in existing rules, both in the U.S. and globally, and through current examination coverage.

CME supported requiring DCOs to conduct an enterprise technology risk assessment as a part of a DCO's program of risk analysis and oversight, but believes an assessment should be required at least every two years, rather than annually, to match the controls testing cycle.

The Commission is adopting the enterprise technology risk assessment requirements generally as proposed. The regulation is based on industry standards[21] and will help each DCO produce a broad determination of its system safeguards-related risks, regardless of the source of the risks.

The Commission is, however, revising proposed § 39.18(e)(7)(i) to read as follows (added text in italics), "A [DCO] shall conduct an enterprise technology risk assessment at a frequency determined by an appropriate risk analysis, but no less frequently than annually. *A [DCO] that has conducted an enterprise technology risk assessment that complies with this section may conduct subsequent assessments by updating the previous assessment.*" This change responds to a comment received by the Commission on its system safeguards proposal for DCMs and SDRs[22] and clarifies that the required enterprise technology risk assessment may build upon previous assessments. The comment noted the burden and cost of an annual full assessment, and the Commission believes this is a reasonable means to reduce both.

2. Independence Requirements

CME suggested that the Commission permit DCOs to allow internal groups outside of the enterprise risk management function to handle components of the enterprise technology risk assessment.

ICE stated that the enterprise technology risk assessment should be the function of an enterprise risk program separate from the information security groups.

In response to the comments, the Commission emphasizes that the final regulation provides flexibility regarding who may conduct the enterprise technology risk assessment. If a DCO chooses not to use independent contractors, the enterprise technology risk assessment may be conducted by employees who are not responsible for the development or operation of the systems or capabilities being assessed.

G. Scope of Testing

Proposed § 39.18(e)(8) would provide that the scope of all system safeguards testing and assessment required by § 39.18 must be broad enough to include all testing of automated systems, networks, and controls necessary to identify any vulnerability which, if exploited or accidentally triggered, could enable an intruder or unauthorized user or insider to: (1) Interfere with the entity's operations or with fulfillment of the entity's statutory and regulatory responsibilities; (2) impair or degrade the reliability, security, or adequate scalable capacity of the entity's automated systems; (3) add to, delete, modify, exfiltrate, or compromise the integrity of any data related to the entity's regulated activities; or (4) undertake any other unauthorized action affecting the entity's regulated activities or the hardware or software used in connection with those activities.

CME and Nadex stated that the requirement to identify "any vulnerability" that could compromise "any data," or allow an intruder to undertake "any other unauthorized action" is too broad. CME argued that in being so broad, the Commission undermines the value of a risk-based approach. Nadex suggested that the proposed requirement be amended to limit responsibility to a reasonableness standard.

The Commission agrees that the proposed language is overly broad and undermines a risk-based approach to system safeguards testing. Therefore, the Commission is revising proposed § 39.18(e)(8) as follows (added text in italics), "The scope of testing and assessment required by this section shall be broad enough to include *the* testing of automated systems and controls *that a [DCO]'s required program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary* to identify *risks and vulnerabilities that* could enable an intruder or unauthorized user or insider. . . ." The revisions reinforce a risk-based approach to system safeguards testing by basing the scope of testing on the DCO's program of risk analysis and oversight and current cybersecurity threat assessment.

Nadex noted that the "current cybersecurity threat analysis" the DCO would use to assess its possible adversaries' capabilities could be interpreted to include not only the DCO's internal risk assessment, but also warnings/notices generated from third party entities. Nadex requested that the Commission confirm that the "current cybersecurity threat analysis" refers only to the DCO's internal risk assessment.

The Commission does not believe that a DCO preparing a cybersecurity threat assessment can appropriately ignore available external warnings or notices. Thus, contrary to Nadex's recommendation, the Commission is clarifying that a DCO is required to consider reasonably available external analyses when preparing a current cybersecurity threat assessment.

CME stated that adopting regulations requiring DCOs to identify "any vulnerability" underlies an assumption that DCOs falling victim to the most sophisticated threats are singularly responsible for being attacked. Therefore, CME recommended that the Commission adopt safe harbors for DCOs who seek to comply with their core principle responsibilities in order to encourage DCOs to seek out partnerships and best serve the common goal of improving the industry's overall state of cyber resilience.

In light of the revisions to proposed § 39.18(e)(8) discussed above, the Commission declines to provide a "safe harbor" for DCOs "who seek to comply with their core principle responsibilities." As the revisions make clear, the Commission is not seeking to hold DCOs strictly liable for every cyber attack they might face.

H. Internal Reporting and Review

Proposed § 39.18(e)(9) would provide that both the senior management and the board of directors of the DCO must receive and review reports setting forth the results of the testing and assessment required by § 39.18. Moreover, the DCO would be required to establish and follow appropriate procedures for the remediation of issues identified through this review, as provided in proposed § 39.18(e)(10), and for evaluation of the effectiveness of testing and assessment protocols.

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[21] *See* PCI–DSS, *supra* note 13, at 105; FINRA Report, *supra* note 10, at 14.

[22] Tradeweb Markets, LLC, Comment Letter on System Safeguards Testing Requirements Proposed Rule (Feb. 22, 2016), *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60657&SearchText.*

Nadex stated that reports generated based on system testing are often lengthy and technical, and that requiring management and the board to review technical testing results would require individuals in those positions to have a level of technical knowledge and sophistication that may not otherwise be required of the position. Therefore, Nadex requested that the Commission clarify whether a narrative executive summary would satisfy the proposed requirement. Additionally, Nadex requested that the Commission clarify whether the reports may be presented to the board at its regularly scheduled quarterly meetings.

CME, MGEX, and OCC stated that a DCO's board of directors should be able to delegate the review required by proposed § 39.18(e)(9) to a board-level committee.

In response to Nadex, the Commission notes that providing a DCO's board with a narrative executive summary is not sufficient to satisfy the requirements of the regulation. Consistent with generally accepted best practices, the final regulation requires that the board must instead receive and review the technical reports containing testing results and assessments.[23] To the extent there is concern regarding management's or the board of directors' ability to understand the required reports, the Commission notes that nothing in the regulation prevents a DCO from including additional, clarifying documents, such as executive summaries or compilations, with the required reports. The Commission believes that providing management or the board of directors with appropriate summaries or compilations can be an effective way to help a DCO fulfill the requirement in final § 39.18(e)(9). The Commission is further clarifying that the board may receive the materials at a regularly scheduled board meeting and that the board may delegate the review required under final § 39.18(e)(9) to an appropriate board-level committee. The Commission is adopting § 39.18(e)(9) as proposed.

I. Remediation

Proposed § 39.18(e)(10) would require a DCO to analyze the results of the testing and assessment required by § 39.18 to identify all vulnerabilities and deficiencies in its systems. The proposed regulation would require a DCO to remediate those vulnerabilities and deficiencies to the extent necessary to enable it to fulfill its statutory and regulatory obligations. In addition, the remediation would have to be timely in light of appropriate risk analysis with respect to the risks presented by such vulnerabilities and deficiencies.

Nadex stated that while it agrees with the proposed remediation requirements generally, the language requiring identification of "all" vulnerabilities and deficiencies would essentially impose strict liability on the firm for any breach of its security.

In response to Nadex's comment, the Commission is revising proposed § 39.18(e)(10) as follows, "A [DCO] shall identify *and document* vulnerabilities and deficiencies in its systems *revealed by the testing and assessment required by this section.* The [DCO] shall *conduct and document an appropriate analysis of the risks presented by each vulnerability or deficiency to determine and document whether to* remediate *the vulnerability or deficiency or accept the associated risk. When a [DCO] determines to remediate a vulnerability or deficiency, it* must *remediate in a timely manner given the nature and magnitude of the associated risk.*" The revisions require a DCO to determine whether to remediate or accept the risks presented by a vulnerability or deficiency based on an analysis of those risks, and to document that analysis. The changes acknowledge that in some instances, depending on the results of an appropriate risk analysis, a DCO may reasonably choose to accept a given risk. The changes also remove any suggestion that testing would necessarily identify every vulnerability, or that a DCO must remediate all vulnerabilities.

The Commission believes that the terms "remediate" and "accept" provide the universe of appropriate responses to identified vulnerabilities and deficiencies. Industry standards outlining potential responses to cyber risks speak in terms of mitigating, accepting, avoiding, and sharing or transfer[24] of risk.[25] NIST describes risk mitigation as risk reduction, and the appropriate risk response for that portion of risk that cannot be accepted, avoided, shared, or transferred.[26] The Commission believes that the term "remediate" as used in final § 39.18(e)(10) captures mitigation. NIST describes risk avoidance as taking specific actions to eliminate the activities or technologies that are the basis for the risk or to revise or reposition these activities or technologies in the organizational mission/business processes to avoid the potential for unacceptable risk.[27] The Commission believes these types of avoidance actions are also properly considered risk remediation.

Nadex also urged the Commission to establish safe harbor provisions offering protection where it is apparent the DCO has acted in good faith and maintains reasonable standards, consistent with at least the minimum requirements prescribed by the regulations, to prevent, monitor, detect, and address internal and external cyber threats. In light of the revisions to § 39.18(e)(10), the Commission does not believe the addition of any safe harbor provision is necessary. The final regulation imposes specific system safeguards testing and remediation requirements, and does not seek to hold DCOs strictly liable for every cyber attack.

J. Recovery Time Objective

Proposed § 39.18(a) would revise the definition of "recovery time objective" to make the language consistent with that used elsewhere in § 39.18.

OCC stated that it agrees with the 2-hour recovery time objective for physical events, but believes that a reasonableness standard is more appropriate for cybersecurity events.

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[23] FFIEC Handbook, *supra* note 13, at 5.

[24] The Commission does not believe that risk sharing or transfer is an appropriate response to systems risks, and does not intend for it to constitute remediation under § 39.18(e)(10) as finalized. NIST describes risk sharing or transfer as the appropriate risk response when organizations desire and have the means to shift risk liability and responsibility to other organizations. NIST SP 800–39, *supra* note 13, at 43. The Commission's regulatory approach in this area, however, requires that a DCO retain complete responsibility for its risk program. *See* 17 CFR 39.18(f)(2)(i) (to be re-codified as § 39.18(d)(2)). Additionally, NIST cautions that risk transfer reduces neither the likelihood of harmful events occurring nor the consequences in terms of harm to organizational operations and assets, individuals, other organizations, or the nation. NIST SP 800–39, *supra* note 13, pp. 43. The Commission does not believe that a risk response that does not address the likelihood of a harmful event or its consequences is an appropriate response.

[25] *See, e.g.,* NIST SP 800–39, *supra* note 13, at 41–43.

[26] *Id.* at 42–43.

[27] *Id.* at 42.

OCC's comment relates to the recovery time objective period, which is addressed in § 39.34, rather than the "recovery time objective" definition that is at issue here. The Commission will take the comment under advisement, but it is beyond the scope of this rulemaking. Accordingly, the Commission is adopting the definition of "recovery time objective" as proposed.

K. Additional Comments

The Commission received several general comments on the proposed rule. CME, ICE, LCH, MGEX, and Nadex generally expressed support for the Commission's rulemaking efforts.

1. Principles-Based Requirements

ICE, MGEX, and OCC favored a principles-based approach, and argue that the Commission's approach is overly prescriptive. Specifically, OCC suggested that the Commission adopt a framework similar to SEC Regulation Systems Compliance and Integrity, which allows registrants to design their own compliance plans using industry standards that meet specified requirements that further the goals intended by the regulation.

CME noted that it is important to allow entities, especially those operating within multiple jurisdictions, the flexibility to look to the best practices and standards that are most appropriate for addressing their unique risks, noting that best practices and generally accepted standards were not designed for the financial services industry.

MGEX stated that the expanded definition of "information security" in proposed § 39.18(b)(2) is overly prescriptive, and that this "check-the-box" list would not keep up with evolving markets, potentially giving the Commission a false sense of security.

The Commission declines to alter its approach of basing this regulation on industry standards. This approach results in a regulation that is not overly prescriptive and will provide DCOs with flexibility to design systems and testing procedures based on the best practices that are most appropriate for that DCO's risks.

2. International Harmonization

ICE, LCH, and OCC stated that it is important for the Commission to consider harmonizing its regulations with international standards for system safeguards testing. Specifically, OCC stated that it is concerned that systemically important clearing houses that are subject to multiple regulatory regimes will face compliance challenges, particularly during regulatory exams, if regulators fail to coordinate and align on a common set of guidelines or standards.

As stated above, the Commission believes that this regulation's reliance on industry standards will provide DCOs, including those subject to multiple regulatory regimes, with flexibility to design systems and testing procedures based on the best practices that are most appropriate for that DCO's risks. Additionally, the Commission notes that the rule is consistent with the Guidance on Cyber Resilience for Financial Market Infrastructures published by the Committee on Payments and Market Infrastructures ("CPMI") and the International Organization of Securities Commissions ("IOSCO") (together, "CPMI–IOSCO"). The report sets out internationally agreed upon guidelines designed to help financial market infrastructures, including central counterparties, enhance their cyber resilience.[28]

3. DCO/DCM Harmonization

MGEX noted that because it is registered with the Commission as both a DCO and a DCM, it cannot avail itself of the benefits of the 5% carve-out from the definition of "covered designated contract market" provided in the Commission's proposed regulation applicable to DCMs.[29] MGEX recommended that a 5% threshold be added to the DCO rulemaking, and that the Commission provide adequate ramp-up and ramp-down periods for organizations moving above or below this threshold.

MGEX also stated that the Commission should more closely harmonize its DCO and DCM cybersecurity requirements. For example, with respect to business continuity and disaster recovery plans, DCMs are required to coordinate with members and other market participants upon whom the DCM depends to provide liquidity, while a DCO is required to coordinate with its clearing members. MGEX believes these requirements should be harmonized and provide for coordination with other entities deemed appropriate by an organization. MGEX is concerned that if clearing members or other participants are required to coordinate extensively with DCMs or DCOs there will be an incentive for them to work with fewer organizations.

The Commission has worked to harmonize the regulations applicable to DCOs and DCMs, and as a result, the regulations track each other very closely. The Commission declines, however, to impose lighter regulation on those DCOs that are also DCMs, but are not covered DCMs. Unlike DCMs, DCOs hold member and customer funds, as well as records of member and customer positions, which would be at risk in the event of a cyber attack. Therefore the Commission believes that all DCOs must satisfy a uniform set of requirements with respect to system safeguards. With respect to the coordination requirement, DCMs and DCOs by their nature have different interested parties, and the need for a DCO to coordinate its business continuity and disaster recovery plan with its clearing members has not changed as a result of this rulemaking.

4. Independence Generally

CME, ICE, and MGEX stated that internal audit groups should be permitted to continue in their current roles at those DCOs. CME noted that industry standards and best practices recognize that independence is determined not by employment, but impartiality. MGEX stated that the independence requirements present a competitive disadvantage for smaller entities that cannot afford full-time independent staff.

The Commission believes that the regulation adequately addresses the use of independent employees in carrying out the requirements of the regulation, and declines to make any changes to specifically address the use of internal audit personnel. In addition, the Commission does not believe it is necessary to change the independence requirements for DCOs that do not want to pay for full-time independent staff to conduct various required activities, as those DCOs are free to engage outside consultants to conduct activities that do not warrant full-time hires.

In the Proposal, the Commission requested comment on whether it should define the term "independent contractor" and if so, how it should define the term. LCH recommended that the Commission provide further guidance or a specific definition of "independent contractor" to maintain a consistent approach by all DCOs, but did not identify any specific lack of clarity that may result from use of the term absent a Commission definition. After consideration, the Commission is clarifying that as used in § 39.18, the term independent contractor does not include employees of a DCO's parent or affiliate company or co-sourced individuals.[30] In light of this clarification, the Commission does not believe that a definition of "independent contractor" is necessary.

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[28] CPMI–IOSCO Guidance on Cyber Resilience for Financial Market Infrastructures, June 29, 2016, available at: *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD535.pdf.*

[29] System Safeguards Testing Requirements, 80 FR 80140 (Dec. 23, 2015) (to be codified at 17 CFR part 38).

5. Books and Records

ICE stated that the Commission should only require regulated entities, and not the entire firm of which the regulated entity is a part, to produce books and records relevant to a particular examination. According to ICE, overly burdensome production requirements will limit the regulated entities from having open and honest conversations related to risk. For example, risk is often discussed at a firm-wide level and not by a specific regulated entity. ICE contends that discussion regarding risks for non-CFTC regulated companies is not of interest to the Commission, and jeopardizes the confidentiality of those non-CFTC regulated companies. Further, ICE believes that CFTC requests for information from non-CFTC regulated companies would likely cause conflicts with other regulators and could violate foreign laws or regulations.

The Commission believes that document production obligations during the course of an examination are beyond the scope of the rulemaking, but notes that Commission registrants are expected to produce required materials to the Commission regardless of whether that information resides at the registrant, at a related entity, or at an outside consultant. In many cases, a DCO shares system safeguard programs with other entities within the corporate structure. In these instances, the Commission will continue to require production of all books and records relating to the system safeguards of DCOs, including those relating to the system safeguards risks and risk analysis and oversight programs of parent companies where such risks or such programs are shared in whole or in part by a DCO.

6. Indemnification

CME stated that removing language from the current version of § 39.18 that expressly provides that a DCO is "free to seek indemnification" from outside service providers reduces certainty for the industry. CME added that because there is nothing within the regulation to prohibit the use of indemnification, as the Commission itself acknowledges, the Commission should not unnecessarily remove the certainty the current language provides.

The Commission does not believe the "free to seek indemnification" language suggested by CME is necessary and is not changing the proposed regulation in this regard. Nothing in the final rule suggests that a DCO could not seek indemnification, and the Commission need not address the legal rights of DCOs with respect to third parties.

7. Systems Developments

MGEX stated that the systems development requirements contained in proposed § 39.18(b)(2)(v) should be required on an "as needed" or "as reasonable" basis. The Commission is declining to make changes to § 39.18(b)(2)(v) based on MGEX's suggestion. Information regarding systems development and quality assurance is appropriately part of the DCO's program of risk analysis and oversight. If a DCO believes that it does not have any information to include on this topic in its program of risk analysis and oversight, it can document that position, and the basis for it, in the program.

III. Dates

LCH stated that in setting a compliance date, the Commission should consider the size and complexity of a DCO as well as the resources a DCO will need to procure in order to comply with the new regulations. The Commission has determined the following compliance dates on a provision-by-provision basis, determining appropriate compliance dates that it believes all DCOs, regardless of their size, complexity, or resources, should reasonably be able to meet.

All of the regulations adopted herein will be effective upon publication in the **Federal Register**. Except as otherwise provided below, DCOs must comply with the requirements in § 39.18 as of the effective date. Based on comments that discussed a DCO's need for time to develop appropriate policies and procedures to come into compliance, the Commission is extending the date by which DCOs must come into compliance for certain provisions as follows:

DCOs must comply with the following provisions 180 days after the effective date: Vulnerability testing—§ 39.18(e)(2); and security incident response plan testing—§ 39.18(e)(6).

DCOs must comply with the following provisions 1 year after the effective date: external penetration testing—§ 39.18(e)(3); internal penetration testing—§ 39.18(e)(4); controls testing—§ 39.18(e)(5); and enterprise technology risk assessment—§ 39.18(e)(7).

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[31] The final rule adopted by the Commission will impact DCOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[32] The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.[33] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule adopted herein will not have a significant economic impact on a substantial number of small entities. The Chairman made the same certification in the proposed rulemaking, and the Commission did not receive any comments on the RFA.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[34] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. This rulemaking contains recordkeeping and reporting requirements that are collections of information within the meaning of the PRA.

The final rule contains provisions that would qualify as collections of information, for which the Commission has already sought and obtained a control number from the Office of Management and Budget ("OMB"). The title for this collection of information is "Risk Management Requirements for Derivatives Clearing Organizations" (OMB Control Number 3038–0076). Responses to this collection of information are mandatory. As discussed in the Proposal, the

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[30] Co-sourced individuals are non-employees who are integrated directly into a business's organizational structure to perform an ongoing function. The co-sourced individuals typically work in collaboration with the business's employees.

[31] 5 U.S.C. 601 *et seq.*

[32] *See* 47 FR 18618, 18618–21 (Apr. 30, 1982).

[33] *See* New Regulatory Framework for Clearing Organizations, 66 FR 45604, 45609 (Aug. 29, 2001).

[34] 44 U.S.C. 3501 *et seq.*

Commission believes that the final rule does not impose any new recordkeeping or reporting requirements that are not already accounted for in collection 3038–0076.[35] The Commission did not receive any comments on its assumptions regarding the recordkeeping or information collection requirements resulting from the rule as proposed.

The Commission notes that DCOs are already subject to system safeguard-related recordkeeping and reporting requirements. As discussed in the Proposal, the Commission is amending and renumbering current § 39.18(i) as § 39.18(f), to clarify the system safeguard recordkeeping and reporting requirements for DCOs. The regulation requires DCOs, in accordance with § 1.31,[36] to provide the Commission with the following documents promptly upon request of Commission staff: (1) Current copies of the DCO's business continuity and disaster recovery plan and other emergency procedures; (2) all assessments of the DCO's operational risks or system safeguard-related controls; (3) all required reports concerning system safeguards testing and assessment, whether conducted by independent contractors or employees of the DCO; and (4) all other documents requested by staff of the Division of Clearing and Risk, or any successor division, in connection with Commission oversight of system safeguards pursuant to the CEA or Commission regulations, or in connection with Commission maintenance of a current profile of the DCO's automated systems. The pertinent recordkeeping and reporting requirements of final § 39.18(f) are contained in the provisions of current § 39.18(i), which was adopted on November 8, 2011.[37] Accordingly, the Commission believes that final § 39.18(f) would not impact the burden estimates currently provided for in collection 3038–0076.

C. Consideration of Costs and Benefits

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[38] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission's cost and benefit considerations in accordance with section 15(a) are discussed below.

To further the Commission's consideration of the costs and benefits imposed by its regulation, the Commission invited comments from the public on the costs and benefits associated with the proposed regulation, and included a series of specific requests for comment related to the potential costs and benefits resulting from, or arising out of, requiring DCOs to comply with the proposed changes to § 39.18.[39] A number of commenters addressed the costs and benefits of the Proposal, which the Commission addresses in the discussion that follows. The Commission believes that the changes in the final regulation will reduce the costs of compliance as compared to the Proposal, which itself imposed only modest costs relative to those that already exist under current § 39.18.

2. Background and Baseline for the Final Rule

As an initial matter, the Commission considers the incremental costs and benefits of this regulation, meaning the costs and benefits that are above the current system safeguard practices and requirements under the CEA and the Commission's regulations for DCOs. Where reasonably feasible, the Commission has endeavored to estimate quantifiable costs and benefits. Where quantification is not feasible, the Commission identifies and describes costs and benefits qualitatively.[40]

As discussed in the Proposal, the Commission believes that cyber threats to the financial sector have expanded dramatically in recent years.[41] The current cyber threat environment highlights the need to consider an updated regulatory framework with respect to cybersecurity testing for DCOs. Although the Commission acknowledges that the amendments would likely result in some additional costs for DCOs, the final rule would also bring several overarching benefits to the futures and swaps industry. As discussed more fully below, a comprehensive cybersecurity testing program is crucial to efforts by DCOs to strengthen cyber defenses, to mitigate operational, reputational, and financial risk, and to maintain cyber resilience and ability to recover from cyber attack. Significantly, to ensure the effectiveness of cybersecurity controls, a DCO must test in order to find and fix its vulnerabilities before an attacker exploits them.

The Commission recognizes that any economic effects, including costs and benefits, should be compared to a baseline that accounts for current regulatory requirements. The baseline for this cost and benefit consideration is the set of requirements under the CEA and the Commission's regulations for DCOs. Currently, § 39.18(j)(1)(i) requires a DCO to conduct regular, periodic, and objective testing and review of its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity.[42] This requirement, which forms part of the DCO risk analysis program required under § 39.18(b), must be satisfied by following, at a minimum, "generally accepted standards and industry best practices."[43] Further, current § 39.18(j)(2) requires that this testing be conducted by independent contractors or employees of the DCO not responsible for development or operation of the systems or capabilities being tested.[44]

In addition to referencing generally accepted standards and industry best practices, this cost and benefit discussion uses information provided by DCOs in connection with a survey of DCO system safeguard costs and practices conducted by Commission staff ("February 2015 DCR Survey").[45]

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[35] *See* Risk Management Requirements for Derivatives Clearing Organizations, OMB Control No. 3038–0076, available at: *http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0076.*

[36] Regulation 1.31(a)(1) specifically provides that all books and records required to be kept by the CEA or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. The rule further provides that all such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice. *See* 17 CFR 1.31(a)(1).

[37] 76 FR 69334, at 69428.

[38] 7 U.S.C. 19(a).

[39] 80 FR 80114, at 80133.

[40] For example, to quantify benefits such as enhanced protections for market participants and the public and financial integrity of the futures and swaps markets would require information, data, and/or metrics that either do not exist, or to which the Commission generally does not have access.

[41] *See* 80 FR 80114, at 80114–80115.

[42] 17 CFR 39.18(j).

[43] *See* 17 CFR 39.18(d).

[44] 17 CFR 39.18(j).

[45] On February 19, 2015, the Division of Clearing and Risk requested, pursuant to § 39.19(c)(5)(i), information from each registered DCO regarding the scope and costs of its current system safeguard testing. Of the 14 DCOs contacted, 13 responded. ICE Clear Credit, ICE Clear Europe, Ice Clear US,

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The Commission notes, however, that in certain instances the cost estimates provided by the DCOs included estimates at the parent company level of the DCO. Where parent-level estimates were provided, the DCOs explained that they generally share the same automated systems and system safeguard programs with other entities within the corporate structure and were therefore unable to apportion the actual costs to particular entities. The Commission further notes that some of the DCOs that supplied cost information are also registered with the Commission in other capacities (as DCMs and/or swap data repositories). These DCOs provided cost estimates that cover all of their Commission-regulated functions because they generally share the same automated systems and system safeguard programs. Therefore, the Commission has attempted to account for these distinctions, where appropriate.

In general, the final regulation clarifies existing system safeguards requirements under current § 39.18 by identifying specific testing required by industry best practices. To the extent the final rule imposes new requirements and thus additional costs, the primary costs will result from more frequent testing, including some testing that must be carried out by independent contractors on behalf of the DCO. As a result, the final rule may increase operational costs for DCOs by requiring additional resources. In addition, the Commission notes that some DCOs are larger or more complex than others, and the requirements may impact DCOs differently depending on their size and the complexity of their systems. Thus, the Commission expects that the costs and benefits may vary somewhat among DCOs. The Commission is sensitive to the economic effects of the regulation, including costs and benefits.

While certain costs are amenable to quantification, other costs cannot be reasonably estimated, such as the costs to the public or market participants in the event of a cybersecurity incident at a DCO. The Commission's final regulation is intended to further mitigate the frequency and severity of system security breaches or functional failures, and therefore, serve an important, if unquantifiable, public benefit. Although the benefits of effective regulation are difficult to value in dollar terms, the Commission believes that they are no less important to consider given the Commission's mission to protect market participants and the public and to promote market integrity.

The discussion of costs and benefits that follows begins with a discussion of the comments received regarding the costs and benefits of the Proposal generally. Following the general discussion, the Commission provides a summary of changes to the proposed rule that resulted in the final rule, discusses the costs and benefits of the final rule, and where relevant, the costs of the final rule relative to the Proposal and addresses comments specific to the costs and benefits of each proposal. At the conclusion of this discussion, the Commission considers the costs and benefits of the final regulation collectively in light of the five factors set forth in section 15(a) of the CEA.

3. General Comments Received

CME estimates that the proposed rule would cost CME Group approximately $7.2 million over a two-year period. CME noted that its cost estimate also includes the Commission's proposal applicable to DCMs and does not separately estimate costs for clearing, trading, or data reporting. As described more fully below, the Commission is adopting the final regulation with modifications in certain key areas, which should result in less cost and burden for DCOs relative to the Proposal.

LCH recommended that the Commission consider the complexity created by multiple standards coming into effect in different major jurisdictions within the same timeframe. LCH stated that although international DCOs will achieve compliance against the highest minimum standards, the lead time for building testing programs and supportive compliance controls to meet many sets of new standards could be longer for larger and more complex DCOs than for smaller, regional DCO operations. The Commission agrees with LCH and, as discussed above in section III, has set individualized compliance dates for different aspects of the regulation. The Commission believes that all DCOs, regardless of their size, complexity, or resources, should generally be able to comply by the specified dates.

MGEX stated that some entities may incur additional costs due to the divergence between the Commission's proposed rules for DCMs and DCOs, including the programs of risk analysis and oversight and coordination of the business continuity and disaster recovery plan with industry participants. The Commission notes that the rules for DCMs and DCOs are largely harmonized, and that differences in the programs of risk analysis and oversight for DCOs and DCMs are largely attributable to the different risks faced by the two types of entities. The new rules applicable to DCMs require that the program of risk analysis and oversight include enterprise risk management and governance applicable specifically to security and technology, but as noted in the Proposal, any parallel requirements for DCOs must be addressed in a more comprehensive fashion involving more than the system safeguards context alone, and thus are not appropriate for this rulemaking.[46] Additionally, the requirement for a DCO to coordinate its business continuity and disaster recovery plan with clearing members is not a new requirement, and has not been amended by this rulemaking. That requirement has only been renumbered, and any compliance costs are not properly attributed to this rulemaking.

LCH and MGEX stated that the Commission should consider the size and complexity of the DCO in calculating the cost of the proposed requirements. Specifically, MGEX noted that $8,383,222, a figure drawn from the notice of proposed rulemaking for the system safeguards rules applicable to DCMs, is "excessively punitive" for smaller entities. It further stated that organizations like MGEX cannot bear these costs, and that the Commission should not require them to comply because they present lower overall risk to the industry, and have dramatically smaller exposure to vulnerabilities compared to SIDCOs. The Commission notes that the figure cited by MGEX is not an estimate of new costs arising from this rulemaking. It was instead an average calculated from preliminary information collected from some DCMs and SDRs regarding their current costs associated with conducting vulnerability testing, external and internal penetration testing, controls testing, and enterprise technology risk assessments. The Commission nevertheless acknowledges that this rulemaking will impose new costs on DCOs beyond the current cost of compliance, and recognizes that the actual costs may vary widely as a result of numerous factors including the size of the organization, the complexity of the automated systems, and the scope of the test. The Commission has attempted to limit costs for smaller DCOs by providing the flexibility to design systems and testing procedures that are

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and the Clearing Corporation, each subsidiaries of Intercontinental Exchange, Inc., provided a single response, indicating that their testing costs are shared. LCH.Clearnet Ltd, LCH.Clearnet LLC, and LCH.Clearnet SA, each subsidiaries of LCH.Clearnet Group Ltd., also provided a single response, indicating that their testing costs are shared.

[46] 80 FR 80114, at 80123 n. 127.

appropriate for each DCO's individual risks.

CME and LCH noted that the shortage of skilled professionals could increase costs directly and indirectly as a result of the proposed rule. The Commission notes that where appropriate, the final rule provides additional flexibility regarding the ability of DCOs to choose whether to use internal or external personnel to conduct certain tests.

MGEX noted that implementation on the scale required by this rulemaking will include significant personnel and non-personnel resources. These additional costs include IT and operations personnel costs, purchase of software and hardware, legal and compliance costs, and the cost of third-party testing vendors. MGEX anticipated that its costs will go up two or three times if the rulemakings are made final in their proposed form, explaining that the highest cost of compliance would result from hiring of independent contractors/professionals. As discussed more fully below and in the Proposal, the Commission acknowledges that there will be some increases in the costs described by MGEX. In the final rule, the Commission, where appropriate, has provided DCOs with additional flexibility regarding who may conduct certain tests. The Commission notes, however, that many of the costs described by MGEX are attributable to compliance with the current rule and not to additional requirements imposed by this rulemaking. For example, the requirement to conduct testing with independent contractors or independent employees already exists under current § 39.18(j)(2). Further, based on industry standards, current § 39.18 requires DCOs to conduct external penetration testing using an independent contractor.

4. Consideration of Costs and Benefits Related to the Final Rule

This section discusses cost and benefit considerations related to the final rule, including those aspects of the regulation that have changed since the proposed rule, and those aspects of the regulation on which the Commission received comments.

a. Regulation 39.18(e)(2)—Vulnerability Testing

i. Summary of Final Regulation

As discussed above in section II(A), the Commission is revising proposed § 39.18(e)(2)(ii) to remove the explicit requirement for authenticated scanning where indicated by appropriate risk analysis. The final rule requires that a DCO conduct automated vulnerability scanning, which complies with generally accepted best practices. The Commission is also revising § 39.18(e)(2)(iii) to remove the proposed requirement that two of the required quarterly vulnerability tests be conducted by independent contractors. Under the final rule, all four required tests may be conducted by independent contractors or employees of the DCO who are not responsible for development or operation of the systems or capabilities being tested. The Commission is otherwise finalizing § 39.18(e)(2) and the definition of "vulnerability testing" as proposed, and the Commission's consideration of the costs and benefits associated with those sections does not differ from those discussed in the Proposal.

ii. Costs

NGX commented that compliance with the proposed rule would not be inordinately costly relative to the benefits, with the exception of the requirements in § 39.18(e)(2)(i) to conduct vulnerability testing on a quarterly basis. NGX estimates that testing quarterly would cost over $100,000 more per year than testing annually, and stated that the costs were not warranted because little changes from quarter to quarter. The Commission notes that industry best practices state that vulnerability testing should be conducted "at least quarterly."[47] Accordingly, current § 39.18 requires DCOs to conduct vulnerability testing on a quarterly basis. Therefore, the Commission does not believe that the frequency requirement of § 39.18(e)(2)(i) will impose new costs on DCOs.

The Commission has determined not to adopt the proposed requirement for authenticated scanning where indicated by appropriate risk analysis in the final § 39.18(e)(2)(ii). The rule as adopted will require automated vulnerability scanning to comply with best practices. Because current § 39.18 requires DCOs to comply with industry best practices, the Commission does not believe that DCOs will incur additional costs as a result of the adoption of § 39.18(e)(2)(ii).

ICE, LCH, OCC, and MGEX all noted significant costs associated with hiring outside contractors to conduct vulnerability tests. OCC believes that requiring a DCO to use an independent contractor to perform vulnerability testing during the same year that such person is performing external penetration testing would unnecessarily increase costs without an added benefit, because vulnerability testing is largely subsumed within external penetration testing. As discussed above, the Commission has determined not to adopt the proposed independent contractor requirement in final § 39.18(e)(2)(iii). Under the final rule, all required testing may be done by an independent contractor or by independent employees. The final rule is thus consistent with current § 39.18(j)(2), which requires systems safeguards testing to be conducted by independent contractors or independent employees of the DCO. Because final § 39.18(e)(2)(iii) does not change the current requirement, it will not impose additional costs on DCOs.

iii. Benefits

The Commission did not receive any comments specific to the benefits of vulnerability testing and believes the benefits of final § 39.18(e)(2) do not differ from those discussed in the Proposal.

b. Regulation 39.18(e)(3)—External Penetration Testing

As discussed above in section II(B), the Commission is adopting § 39.18(e)(3) and the definition of "external penetration testing" as proposed. The Commission did not receive any comments specific to the costs or benefits of external penetration testing. The Commission believes that the costs and benefits of § 39.18(e)(3) do not differ from those discussed in the Proposal.

c. Regulation 39.18(e)(4)—Internal Penetration Testing

As discussed above in section II(C), the Commission is adopting § 39.18(e)(4) and the definition of "internal penetration testing" as proposed. The Commission did not receive any comments specific to the costs or benefits of internal penetration testing. The Commission believes that the costs and benefits of § 39.18(e)(4) do not differ from those discussed in the Proposal.

d. Regulation 39.18(e)(5)—Controls Testing

i. Summary of Final Regulation

As discussed above in section II(D), the Commission is revising proposed § 39.18(e)(5)(i) to remove a prescribed two-year minimum testing period for all controls testing, and instead require that (a) key controls be tested every three years; and (b) non-key controls be tested at a frequency determined by an appropriate risk analysis. The Commission is making a corresponding change to proposed § 39.18(e)(5)(ii) to require that independent contractors test each key control at least every three years rather than every two. The Commission is otherwise finalizing § 39.18(e)(5) as well as the definitions of "controls," "controls testing," and "key controls" as proposed, and the Commission's consideration of the costs and benefits associated with those sections does not differ from those discussed in the Proposal.

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[47] *See* FFIEC Handbook *supra* note 13 at 82.

ii. Costs

CME and OCC stated that the costs of requiring controls testing every two years outweigh the benefits. As discussed above, the Commission is adopting proposed § 39.18(e)(5)(i) with modifications to require key controls testing to be conducted at a frequency determined by an appropriate risk analysis, but no less frequently than every three years. The Commission has determined not to adopt the proposed minimum frequency requirement for non-key controls. As discussed in the Proposal, the Commission acknowledges that the minimum frequency requirement for key controls testing may increase costs for DCOs. The Commission notes, however, that the February 2015 DCR Survey indicated that most DCOs currently conduct controls testing at least annually and some DCOs may not face an increase in costs based on this requirement. Further, because of the modifications from the Proposal, the testing frequency for some DCOs could be reduced, and therefore may be less costly relative to the Proposal.

iii. Benefits

The Commission did not receive any comments specific to the benefits of controls testing and believes the benefits of final § 39.18(e)(5) do not differ from those discussed in the Proposal.

e. Regulation 39.18(e)(6)—Security Incident Response Plan Testing

i. Summary of Final Regulation

As discussed above in section II(E), the Commission is amending the definition of "security incident" in proposed § 39.18(a) in order to provide additional clarity. Further, the Commission is adopting proposed § 39.18(e)(6)(iv) with modifications to remove the restrictions on which employees are permitted to conduct security incident response plan testing. The Commission is otherwise finalizing § 39.18(e)(6) as well as the definitions of "security incident response plan" and "security incident response plan testing" as proposed, and the Commission's consideration of the costs and benefits associated with those sections does not differ from those discussed in the Proposal.

ii. Costs

The Commission does not believe that the changes to the definition of "security incident" will affect the costs of the rule. As explained in the Proposal, the Commission does not believe proposed § 39.18(e)(6)(iv) will impose new costs on DCOs, because it is consistent with current § 39.18(j)(2). Further, without the proposed restrictions regarding which employees may conduct security incident response plan testing, § 39.18(e)(6)(iv) as finalized may lower costs for some DCOs by providing flexibility that does not exist in the current rule.

The Commission did not receive any comments related to the costs of security incident response plan testing.

iii. Benefits

The Commission did not receive any comments specific to the benefits of security incident response plan testing and believes that the benefits of final § 39.18(e)(6) do not differ from those discussed in the Proposal.

f. Regulation 39.18(e)(7)—Enterprise Technology Risk Assessment

In the Proposal, the Commission concluded that proposed § 39.18(e)(7) is consistent with current industry standards[48] and would not impose additional costs on DCOs. As discussed above in section II(F), the Commission is adopting § 39.18(e)(7) and the definition of "enterprise technology risk assessment" as proposed, except for changes to § 39.18(e)(7)(i) to clarify that a DCO that has conducted an enterprise technology risk assessment that complies with this section may conduct subsequent assessments by updating the previous assessment. This was intended as a clarification rather than a substantive change, and in any event will not impose any additional costs on DCOs.

The Commission did not receive any comments specific to the costs or benefits of enterprise technology risk assessment testing. The Commission believes that the costs and benefits of final § 39.18(e)(7) do not differ from those discussed in the Proposal.

g. Regulation 39.18(e)(8)—Scope of Testing and Assessment

i. Summary of Proposed Regulation

As discussed above in section II(G), the Commission is revising proposed § 39.18(e)(8) to state that that the scope of testing and assessment required by § 39.18 shall be broad enough to include the testing of automated systems and controls that a DCO's required program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable an intruder or unauthorized user or insider to: (1) Interfere with the entity's operations or with fulfillment of the entity's statutory and regulatory responsibilities; (2) impair or degrade the reliability, security, or adequate scalable capacity of the entity's automated systems; (3) add to, delete, modify, exfiltrate, or compromise the integrity of any data related to the entity's regulated activities; and (4) undertake any other unauthorized action affecting the entity's regulated activities or the hardware or software used in connection with those activities.

ii. Costs and Benefits

In the Proposal, the Commission discussed the costs of proposed § 39.18(e)(8) in relation to each substantive testing requirement. In each case, the Commission concluded that proposed § 39.18(e)(8) would not impose new costs on DCOs. The Commission believes that the changes to proposed § 39.18(e)(8) narrow the scope of testing in the final rule. Rather than requiring that DCOs test all automated systems and controls necessary to identify any of the enumerated risks and vulnerabilities, the scope of testing under the final rule is determined by a DCO's required program of risk analysis and oversight and its current cybersecurity threat analysis. Therefore, the Commission does not believe that final § 39.18(e)(8) will impose new costs on DCOs compared to the proposed rule or the current rule. The Commission believes this risk-based approach will result in improved and more cost-effective testing.

The Commission did not receive any comments specific to the costs or benefits of the scope of testing.

h. Regulation 39.18(e)(9)—Internal Reporting and Review

As discussed above in section II(H), the Commission is adopting § 39.18(e)(9) as proposed. The Commission did not receive any comments specific to the costs or benefits of internal reporting and review. The Commission believes that the costs and benefits of final § 39.18(e)(9) do not differ from those discussed in the Proposal.

i. Regulation 39.18(e)(10)—Remediation

i. Summary of Final Regulation

As discussed above in section II(I), the Commission is revising proposed § 39.18(e)(10) to require a DCO to identify and document the vulnerabilities and deficiencies in its systems revealed by the testing and assessment required by the regulation and to conduct and document an appropriate analysis of the risks presented by such vulnerabilities and deficiencies to determine and document whether to remediate or accept each risk.

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[48] *See, e.g.*, PCI–DSS, *supra* note 13, at 105.

ii. Costs

The final rule makes clear that a DCO is only required to consider remediation of those vulnerabilities and deficiencies revealed through testing, rather than all vulnerabilities and deficiencies. Further, the final rule specifically allows DCOs to accept certain risks presented by vulnerabilities and deficiencies when that is appropriate based on an analysis of the risk presented. These changes to the Proposal will, if anything, result in lower costs to DCOs relative to the proposed rule. In any event, responding to vulnerabilities and deficiencies revealed by cybersecurity testing is an industry best practice,[49] and DCOs are already required to comply with this requirement under current § 39.18.

The aspect of the final rule that could impose additional costs on DCOs relative to the current rule is the express requirement that DCOs document the vulnerabilities and deficiencies in its systems revealed by the required testing and assessment, document an appropriate analysis of the risks presented by such vulnerabilities, and document whether to remediate or accept each risk. DCOs would have been required under the proposed rule to analyze their testing results to determine the extent of their required remediation, so the difference in the final rule is the express documentation requirement. The express requirement that DCOs document their analysis imposes at most a slight additional cost on DCOs, particularly given that DCOs would likely have documented the required analysis even absent the express requirement.

The Commission did not receive any comments specific to the costs of remediation.

iii. Benefits

The documentation requirement described above has the joint benefits of helping to ensure that DCOs carefully consider whether to remediate or accept risks, and of allowing the Commission to review the thought process behind these significant decisions. The Commission did not receive any comments specific to the benefits of remediation.

5. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of § 39.18 in light of the specific considerations identified in section 15(a) of the CEA as follows:

a. Protection of Market Participants and the Public

Automated systems are critical to a DCO's operations, which provide essential counterparty credit risk protection to market participants and the investing public. Final § 39.18 is designed to further enhance DCOs' risk analysis programs in order to ensure that such automated systems are reliable, secure, and have an adequate scalable capacity. Accordingly, the Commission believes that the final rule will further help protect the derivatives markets by promoting more robust automated systems and therefore fewer disruptions and market-wide closures, systems compliance issues, and systems intrusions. Preventing disruptions helps to ensure that market participants will have continuous access to central clearing.

Additionally, providing the Commission with reports concerning the system safeguards testing and assessments required by the final regulation will further facilitate the Commission's oversight of derivatives markets, augment the Commission's efforts to monitor systemic risk, and will further the protection of market participants and the public by helping to ensure that a DCO's automated systems are available, reliable, secure, have adequate scalable capacity, and are effectively overseen.

The costs of this rulemaking would be mitigated by the countervailing benefits of improved design, more efficient and effective processes, and enhanced planning that would lead to increased safety and soundness of DCOs and the reduction of systemic risk, which protect market participants and the public from the adverse consequences that would result from a DCO's failure or a disruption in its functioning.

b. Efficiency, Competitiveness and Financial Integrity

The amendments to § 39.18 will help preserve the efficiency and financial integrity of the derivatives markets by promoting comprehensive oversight and testing of a DCO's operations and automated systems. Specifically, the amendments will further reduce the probability of a cyber attack that could lead to a disruption in clearing services which could, in turn, cause disruptions to the efficient functioning and financial integrity of the derivatives markets. Preventing cyber attacks could prevent monetary losses to DCOs, and thereby help protect their financial integrity.

The Commission does not anticipate the final rule to have a significant impact on the competitiveness of the derivatives markets.

c. Price Discovery

The Commission does not anticipate the amendments to § 39.18 to have a direct effect on the price discovery process. However, ensuring that DCOs' automated systems function properly to clear trades protects the price discovery process to the extent that a prolonged disruption or suspension in clearing at a DCO may cause potential market participants to refrain from trading.

d. Sound Risk Management Practices

The amendments to § 39.18 will strengthen and promote sound risk management practices across DCOs. Specifically, the amendments will build upon the current system safeguards requirements by ensuring that tests of DCOs' key system safeguards are conducted at minimum intervals and, where appropriate, by independent professionals. The applicable tests are each recognized by industry best practices as essential components of a sound risk management program. Moreover, the benefits of the final rule will be shared by market participants and the investing public as DCOs, by their nature, serve to provide such parties with counterparty credit risk protection.

In addition, reliably functioning computer systems and networks are crucial to comprehensive risk management, and being able to request reports of the system safeguards testing required by the final regulation will assist the Commission in its oversight of DCOs and will bolster the Commission's ability to assess systemic risk levels.

e. Other Public Interest Considerations

The Commission notes the public interest in promoting and protecting public confidence in the safety and security of the financial markets. DCOs are essential to risk management in the financial markets, both systemically and on an individual firm level. Regulation 39.18, by explicating current requirements and identifying several additional key tests and assessments, promotes the ability of DCOs to perform these functions free from disruption due to both internal and external threats to its systems.

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[49] *See, e.g.*, NIST SP 800–39, *supra* note 13, at 41–43; FFIEC Handbook, *supra* note 13, at 5.

List of Subjects in 17 CFR Part 39

Commodity futures, Reporting and recordkeeping requirements, System safeguards.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 39 as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 7 U.S.C. 2, 7a–1, and 12a; 12 U.S.C. 5464; 15 U.S.C. 8325.

■ 2. Revise § 39.18 to read as follows:

§ 39.18 System safeguards.

(a) *Definitions.* For purposes of this section and § 39.34:

Controls mean the safeguards or countermeasures employed by the derivatives clearing organization in order to protect the reliability, security, or capacity of its automated systems or the confidentiality, integrity, or availability of its data and information, and in order to enable the derivatives clearing organization to fulfill its statutory and regulatory responsibilities.

Controls testing means assessment of the derivatives clearing organization's controls to determine whether such controls are implemented correctly, are operating as intended, and are enabling the derivatives clearing organization to meet the requirements established by this section.

Enterprise technology risk assessment means a written assessment that includes, but is not limited to, an analysis of threats and vulnerabilities in the context of mitigating controls. An enterprise technology risk assessment identifies, estimates, and prioritizes risks to a derivatives clearing organization's operations or assets, or to market participants, individuals, or other entities, resulting from impairment of the confidentiality, integrity, or availability of data and information or the reliability, security, or capacity of automated systems.

External penetration testing means attempts to penetrate a derivatives clearing organization's automated systems from outside the systems' boundaries to identify and exploit vulnerabilities. Methods of conducting external penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

Internal penetration testing means attempts to penetrate a derivatives clearing organization's automated systems from inside the systems' boundaries to identify and exploit vulnerabilities. Methods of conducting internal penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

Key controls means those controls that an appropriate risk analysis determines are either critically important for effective system safeguards or intended to address risks that evolve or change more frequently and therefore require more frequent review to ensure their continuing effectiveness in addressing such risks.

Recovery time objective means the time period within which a derivatives clearing organization should be able to achieve recovery and resumption of processing, clearing, and settlement of transactions, after those capabilities become temporarily inoperable for any reason up to or including a wide-scale disruption.

Relevant area means the metropolitan or other geographic area within which a derivatives clearing organization has physical infrastructure or personnel necessary for it to conduct activities necessary to the processing, clearing, and settlement of transactions. The term "relevant area" also includes communities economically integrated with, adjacent to, or within normal commuting distance of that metropolitan or other geographic area.

Security incident means a cybersecurity or physical security event that actually jeopardizes or has a significant likelihood of jeopardizing automated system operation, reliability, security, or capacity, or the availability, confidentiality or integrity of data.

Security incident response plan means a written plan documenting the derivatives clearing organization's policies, controls, procedures, and resources for identifying, responding to, mitigating, and recovering from security incidents, and the roles and responsibilities of its management, staff, and independent contractors in responding to security incidents. A security incident response plan may be a separate document or a business continuity-disaster recovery plan section or appendix dedicated to security incident response.

Security incident response plan testing means testing of a derivatives clearing organization's security incident response plan to determine the plan's effectiveness, identify its potential weaknesses or deficiencies, enable regular plan updating and improvement, and maintain organizational preparedness and resiliency with respect to security incidents. Methods of conducting security incident response plan testing may include, but are not limited to, checklist completion, walk-through or table-top exercises, simulations, and comprehensive exercises.

Vulnerability testing means testing of a derivatives clearing organization's automated systems to determine what information may be discoverable through a reconnaissance analysis of those systems and what vulnerabilities may be present on those systems.

Wide-scale disruption means an event that causes a severe disruption or destruction of transportation, telecommunications, power, water, or other critical infrastructure components in a relevant area, or an event that results in an evacuation or unavailability of the population in a relevant area.

(b) *Program of risk analysis and oversight*—(1) *General.* A derivatives clearing organization shall establish and maintain a program of risk analysis and oversight with respect to its operations and automated systems to identify and minimize sources of operational risk through:

(i) The development of appropriate controls and procedures; and

(ii) The development of automated systems that are reliable, secure, and have adequate scalable capacity.

(2) *Elements of program.* A derivatives clearing organization's program of risk analysis and oversight with respect to its operations and automated systems, as described in paragraph (b)(1) of this section, shall address each of the following elements:

(i) Information security, including, but not limited to, controls relating to: Access to systems and data (including, least privilege, separation of duties, account monitoring and control); user and device identification and authentication; security awareness training; audit log maintenance, monitoring, and analysis; media protection; personnel security and screening; automated system and communications protection (including, network port control, boundary defenses, encryption); system and information integrity (including, malware defenses, software integrity monitoring); vulnerability management; penetration testing; security incident response and management; and any other elements of information security included in generally accepted best practices;

(ii) Business continuity and disaster recovery planning and resources, including, but not limited to the controls and capabilities described in paragraph (c) of this section; and any other elements of business continuity and disaster recovery planning and resources included in generally accepted best practices;

(iii) Capacity and performance planning, including, but not limited to, controls for monitoring the derivatives clearing organization's systems to ensure adequate scalable capacity (including, testing, monitoring, and analysis of current and projected future capacity and performance, and of possible capacity degradation due to planned automated system changes); and any other elements of capacity and performance planning included in generally accepted best practices;

(iv) Systems operations, including, but not limited to, system maintenance; configuration management (including, baseline configuration, configuration change and patch management, least functionality, inventory of authorized and unauthorized devices and software); event and problem response and management; and any other elements of system operations included in generally accepted best practices;

(v) Systems development and quality assurance, including, but not limited to, requirements development; pre-production and regression testing; change management procedures and approvals; outsourcing and vendor management; training in secure coding practices; and any other elements of systems development and quality assurance included in generally accepted best practices; and

(vi) Physical security and environmental controls, including, but not limited to, physical access and monitoring; power, telecommunication, and environmental controls; fire protection; and any other elements of physical security and environmental controls included in generally accepted best practices.

(3) *Standards for program.* In addressing the elements listed under paragraph (b)(2) of this section, a derivatives clearing organization shall follow generally accepted standards and industry best practices with respect to the development, operation, reliability, security, and capacity of automated systems.

(4) *Resources.* A derivatives clearing organization shall establish and maintain resources that allow for the fulfillment of each obligation and responsibility of the derivatives clearing organization, including the daily processing, clearing, and settlement of transactions, in light of any risk to its operations and automated systems. The derivatives clearing organization shall periodically verify the adequacy of such resources.

(c) *Business continuity and disaster recovery*—(1) *General.* A derivatives clearing organization shall establish and maintain a business continuity and disaster recovery plan, emergency procedures, and physical, technological, and personnel resources sufficient to enable the timely recovery and resumption of operations and the fulfillment of each obligation and responsibility of the derivatives clearing organization, including, but not limited to, the daily processing, clearing, and settlement of transactions, following any disruption of its operations.

(2) *Recovery time objective.* A derivatives clearing organization's business continuity and disaster recovery plan, as described in paragraph (c)(1) of this section, shall have, and the derivatives clearing organization shall maintain physical, technological, and personnel resources sufficient to meet, a recovery time objective of no later than the next business day following a disruption.

(3) *Coordination of plans.* A derivatives clearing organization shall, to the extent practicable:

(i) Coordinate its business continuity and disaster recovery plan with those of its clearing members, in a manner adequate to enable effective resumption of daily processing, clearing, and settlement of transactions following a disruption;

(ii) Initiate and coordinate periodic, synchronized testing of its business continuity and disaster recovery plan with those of its clearing members; and

(iii) Ensure that its business continuity and disaster recovery plan takes into account the plans of its providers of essential services, including telecommunications, power, and water.

(d) *Outsourcing.* (1) A derivatives clearing organization shall maintain the resources required under paragraphs (b)(4) and (c)(1) of this section either:

(i) Using its own employees as personnel, and property that it owns, licenses, or leases; or

(ii) Through written contractual arrangements with another derivatives clearing organization or other service provider.

(2) *Retention of responsibility.* A derivatives clearing organization that enters into a contractual outsourcing arrangement shall retain complete responsibility for any failure to meet the requirements specified in paragraphs (b) and (c) of this section. The derivatives clearing organization must employ personnel with the expertise necessary to enable it to supervise the service provider's delivery of the services.

(3) *Testing of resources.* The testing referred to in paragraph (e) of this section shall apply to all of the derivatives clearing organization's own and outsourced resources, and shall verify that all such resources will work together effectively. Where testing is required to be conducted by an independent contractor, the derivatives clearing organization shall engage a contractor that is independent from both the derivatives clearing organization and any outside service provider used to design, develop, or maintain the resources being tested.

(e) *Testing*—(1) *General.* A derivatives clearing organization shall conduct regular, periodic, and objective testing and review of:

(i) Its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity; and

(ii) Its business continuity and disaster recovery capabilities, using testing protocols adequate to ensure that the derivatives clearing organization's backup resources are sufficient to meet the requirements of paragraph (c) of this section.

(2) *Vulnerability testing.* A derivatives clearing organization shall conduct vulnerability testing of a scope sufficient to satisfy the requirements set forth in paragraph (e)(8) of this section.

(i) A derivatives clearing organization shall conduct such vulnerability testing at a frequency determined by an appropriate risk analysis, but no less frequently than quarterly.

(ii) Such vulnerability testing shall include automated vulnerability scanning, which shall follow generally accepted best practices.

(iii) A derivatives clearing organization shall conduct vulnerability testing by engaging independent contractors or by using employees of the derivatives clearing organization who are not responsible for development or operation of the systems or capabilities being tested.

(3) *External penetration testing.* A derivatives clearing organization shall conduct external penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (e)(8) of this section.

(i) A derivatives clearing organization shall conduct such external penetration testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually.

(ii) A derivatives clearing organization shall engage independent contractors to conduct the required annual external penetration test. A derivatives clearing organization may conduct other external penetration testing by using employees of the derivatives clearing organization who are not responsible for development or operation of the systems or capabilities being tested.

(4) *Internal penetration testing.* A derivatives clearing organization shall conduct internal penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (e)(8) of this section.

(i) A derivatives clearing organization shall conduct such internal penetration testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually.

(ii) A derivatives clearing organization shall conduct internal penetration testing by engaging independent contractors, or by using employees of the derivatives clearing organization who are not responsible for development or operation of the systems or capabilities being tested.

(5) *Controls testing.* A derivatives clearing organization shall conduct controls testing of a scope sufficient to satisfy the requirements set forth in paragraph (e)(8) of this section.

(i) A derivatives clearing organization shall conduct controls testing, which includes testing of each control included in its program of risk analysis and oversight, at a frequency determined by an appropriate risk analysis, but shall test and assess key controls no less frequently than every three years. A derivatives clearing organization may conduct such testing on a rolling basis over the course of the required period.

(ii) A derivatives clearing organization shall engage independent contractors to test and assess the key controls included in the derivatives clearing organization's program of risk analysis and oversight no less frequently than every three years. A derivatives clearing organization may conduct any other controls testing required by this section by using independent contractors or employees of the derivatives clearing organization who are not responsible for development or operation of the systems or capabilities being tested.

(6) *Security incident response plan testing.* A derivatives clearing organization shall conduct security incident response plan testing sufficient to satisfy the requirements set forth in paragraph (e)(8) of this section.

(i) The derivatives clearing organization shall conduct such security incident response plan testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually.

(ii) The derivatives clearing organization's security incident response plan shall include, without limitation, the derivatives clearing organization's definition and classification of security incidents, its policies and procedures for reporting security incidents and for internal and external communication and information sharing regarding security incidents, and the hand-off and escalation points in its security incident response process.

(iii) The derivatives clearing organization may coordinate its security incident response plan testing with other testing required by this section or with testing of its other business continuity-disaster recovery and crisis management plans.

(iv) The derivatives clearing organization may conduct security incident response plan testing by engaging independent contractors or by using employees of the derivatives clearing organization.

(7) *Enterprise technology risk assessment.* A derivatives clearing organization shall conduct enterprise technology risk assessments of a scope sufficient to satisfy the requirements set forth in paragraph (e)(8) of this section.

(i) A derivatives clearing organization shall conduct an enterprise technology risk assessment at a frequency determined by an appropriate risk analysis, but no less frequently than annually. A derivatives clearing organization that has conducted an enterprise technology risk assessment that complies with this section may conduct subsequent assessments by updating the previous assessment.

(ii) A derivatives clearing organization may conduct enterprise technology risk assessments by using independent contractors or employees of the derivatives clearing organization who are not responsible for development or operation of the systems or capabilities being assessed.

(8) *Scope of testing and assessment.* The scope of testing and assessment required by this section shall be broad enough to include the testing of automated systems and controls that a derivatives clearing organization's required program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable an intruder or unauthorized user or insider to:

(i) Interfere with the derivatives clearing organization's operations or with fulfillment of its statutory and regulatory responsibilities;

(ii) Impair or degrade the reliability, security, or capacity of the derivatives clearing organization's automated systems;

(iii) Add to, delete, modify, exfiltrate, or compromise the integrity of any data related to the derivatives clearing organization's regulated activities; or

(iv) Undertake any other unauthorized action affecting the derivatives clearing organization's regulated activities or the hardware or software used in connection with those activities.

(9) *Internal reporting and review.* Both the senior management and the board of directors of the derivatives clearing organization shall receive and review reports setting forth the results of the testing and assessment required by this section. The derivatives clearing organization shall establish and follow appropriate procedures for the remediation of issues identified through such review, as provided in paragraph (e)(10) of this section, and for evaluation of the effectiveness of testing and assessment protocols.

(10) *Remediation.* A derivatives clearing organization shall identify and document the vulnerabilities and deficiencies in its systems revealed by the testing and assessment required by this section. The derivatives clearing organization shall conduct and document an appropriate analysis of the risks presented by each vulnerability or deficiency to determine and document whether to remediate the vulnerability or deficiency or accept the associated risk. When a derivatives clearing organization determines to remediate a vulnerability or deficiency, it must remediate in a timely manner given the nature and magnitude of the associated risk.

(f) *Recordkeeping.* A derivatives clearing organization shall maintain, and provide to staff of the Division of Clearing and Risk, or any successor division, promptly upon request, pursuant to § 1.31 of this chapter:

(1) Current copies of the derivatives clearing organization's business continuity and disaster recovery plan and other emergency procedures. Such plan and procedures shall be updated at a frequency determined by an appropriate risk analysis, but no less frequently than annually;

(2) All assessments of the derivatives clearing organization's operational risks or system safeguards-related controls;

(3) All reports concerning testing and assessment required by this section, whether conducted by independent contractors or by employees of the derivatives clearing organization; and

(4) All other documents requested by staff of the Division of Clearing and Risk, or any successor division, in connection with Commission oversight of system safeguards pursuant to the Act or Commission regulations, or in connection with Commission maintenance of a current profile of the

derivatives clearing organization's automated systems.

(5) Nothing in paragraph (f) of this section shall be interpreted as reducing or limiting in any way a derivatives clearing organization's obligation to comply with § 1.31 of this chapter.

(g) *Notice of exceptional events.* A derivatives clearing organization shall notify staff of the Division of Clearing and Risk, or any successor division, promptly of:

(1) Any hardware or software malfunction, security incident, or targeted threat that materially impairs, or creates a significant likelihood of material impairment, of automated system operation, reliability, security, or capacity; or

(2) Any activation of the derivatives clearing organization's business continuity and disaster recovery plan.

(h) *Notice of planned changes.* A derivatives clearing organization shall provide staff of the Division of Clearing and Risk, or any successor division, timely advance notice of all material:

(1) Planned changes to the derivatives clearing organization's automated systems that may impact the reliability, security, or capacity of such systems; and

(2) Planned changes to the derivatives clearing organization's program of risk analysis and oversight.

■ 3. In § 39.34, revise paragraphs (a), (b)(3), and (c) to read as follows:

§ 39.34 System safeguards for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) Notwithstanding § 39.18(c)(2), the business continuity and disaster recovery plan described in § 39.18(c)(1) for each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall have the objective of enabling, and the physical, technological, and personnel resources described in § 39.18(c)(1) shall be sufficient to enable, the systemically important derivatives clearing organization or subpart C derivatives clearing organization to recover its operations and resume daily processing, clearing, and settlement no later than two hours following the disruption, for any disruption including a wide-scale disruption.

(b) * * *

(3) The provisions of § 39.18(d) shall apply to these resource requirements.

(c) Each systemically important derivatives clearing organization and subpart C derivatives clearing organization must conduct regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve the required recovery time objective in the event of a wide-scale disruption. The provisions of § 39.18(e) shall apply to such testing.

* * * * *

Issued in Washington, DC, on September 9, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to System Safeguards Testing Requirements for Derivatives Clearing Organizations—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

I strongly support the two rules the Commission has finalized today.

The risk of cyberattack probably represents the single greatest threat to the stability and integrity of our markets today. Instances of cyberattacks are all too familiar both inside and outside the financial sector. Today, they often are motivated not just by those with a desire to profit, but by those with a desire deliberately to disrupt or destabilize orderly operations.

That is why these system safeguard rules are so important. The rules we have finalized today will apply to the core infrastructure in our markets—the exchanges, clearinghouses, trading platforms, and trade repositories. And they will ensure that those private companies are regularly evaluating cyber risks and testing their cybersecurity and operational risk defenses. While our rules already require this generally, the measures we approved today add greater definition—not by being overly prescriptive, but by setting some principles-based standards, and requiring specific types of testing, all rooted in industry best practices.

I've said many times that as regulators, we must not just look backwards to address the causes of past failures or crises. We also must look ahead—ahead to the new opportunities and challenges facing our markets. Financial markets constantly evolve, and we must ensure our regulatory framework is adapting to these changes.

These new rules are one good example of how we are looking ahead and addressing these new challenges. They will serve as a strong and important complement to the many other steps being taken by regulators and market participants to address cybersecurity. For example, government agencies and market participants are already working together to share information about potential threats and risks—and learn from one another.

I want to thank all those who provided feedback on the proposed rules the Commission approved last December. We received a number of thoughtful comments from market participants, most of which expressed broad support for the proposals. Commenters also highlighted some areas of concern, and we made adjustments based on that feedback. For example, we have reduced the frequency of controls testing and narrowed the instances where independent contractor testing is required. We have also clarified definitions of key terms, and made clear that the scope of required testing will be based on appropriate risk and threat analysis.

I also thank Commission staff for their hard work on these measures, particularly our staff in the Division of Market Oversight and Division of Clearing and Risk, as well as the support that is always provided by staff in the Office of General Counsel, the Office of Chief Economist and other staff who comment on the rules. I also thank my fellow Commissioners Bowen and Giancarlo for their support of and suggestions regarding these final rules.

Appendix 3—Concurring Statement of Commissioner Sharon Y. Bowen

I will be voting yes on both systems safeguards rules. There is not much more to say than what I said when these rules were proposed on December 10, 2015.[1] Cybersecurity is a top concern for American companies, especially financial firms. These rules are a good step forward in addressing these concerns.

As I noted when they were proposed, there are many aspects of these proposals that I like:

First, they set up a comprehensive testing regime by: (a) defining the types of cybersecurity testing essential to fulfilling system safeguards testing obligations, including vulnerability testing, penetration testing, controls testing, security incident response plan testing, and enterprise technology risk assessment; (b) requiring internal reporting and review of testing results; and (c) mandating remediation of vulnerabilities and deficiencies. Further, for certain significant entities, based on trading volume, it requires heightened measures such as minimum frequency requirements for conducting certain testing, and specific requirements for the use of independent contractors.

Second, there is a focus on governance—requiring, for instance, that firms' Board of Directors receive and review all reports setting forth the results of all testing. And third, these rulemakings are largely based on well-regarded, accepted best practices for cybersecurity, including The National Institute of Standards and Technology

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[1] Concurring Statement of Commissioner Sharon Y. Bowen Regarding Notice of Proposed Rulemaking on System Safeguards Testing Requirements (Dec. 10, 2015), *available at http://www.cftc.gov/PressRoom/SpeechesTestimony/bowenstatement121615b.*

Framework for Improving Critical Infrastructure Cybersecurity ("NIST Framework").[2]

I was also an early proponent of including all registered entities, including SEFs, in this rule. I am glad to see them included, and look forward to the staff roundtable to discuss how to apply heightened standards to the significant SEFs. Thank you and I look forward to the staff's presentation.

Appendix 4—Statement of Commissioner J. Christopher Giancarlo

Good regulation should be balanced. It should have a positive impact on the marketplace while mitigating costs to the extent possible. I believe today's system safeguards final rule for derivatives clearing organizations (DCOs) generally achieves such balance although I have concerns about the cost impact on smaller DCOs.

As I have said, cyber and system security is one of the most important issues facing markets today in terms of integrity and financial stability.[1] Given its importance, it is right that the Commission implements rules requiring DCOs and other registrants to conduct regular testing of their systems. I am pleased that the final rule requires DCOs to follow industry adopted standards and best practices. I believe this approach recognizes the rapid evolution of cyber threats and will allow DCOs the flexibility to continually update their cyber defenses in response to these threats. I also recognize that the final rule addresses my concern that being hacked by itself cannot be considered a rule violation subject to enforcement. The final rule clarifies that the Commission it is not seeking to hold DCOs strictly liable for being attacked.

While the final rule generally takes the right approach, I am concerned about its cost on smaller DCOs. I have expressed my concern about the cost of regulation on smaller market participants on numerous past occasions.[2] One commenter to this rulemaking noted that its costs will likely increase two to three times if these rules are finalized as proposed.[3] The independent contractor and employee testing requirement is especially costly for these small DCOs. While the parallel designated contract market (DCM) system safeguards rulemaking addresses this cost concern through the "covered-DCM" concept, the DCO rule does not. Although the DCO rule does not have such a concept, I understand from our Division of Clearing and Risk that they are willing to discuss the concerns of smaller DCOs. I encourage those DCOs to raise their concerns with the Division and encourage the Division to act with appropriate practicality.

I note approvingly that the Commission has alleviated some burdens from the proposed rulemaking such as increasing the frequency of key controls testing from two years to three years, removing the requirement for independent contractors to conduct vulnerability testing and removing the explicit requirement for authenticated scanning, among other requirements.

I support the final DCO system safeguards rule despite concerns about its costs. Although I would have preferred that the rule take a less one-size-fits-all approach, I am a firm supporter of effective cyber and system security policies and procedures given the serious threat that cyber belligerents pose. I commend staff for their hard work and generally practical approach to system safeguards for DCOs. I also appreciate that they responded to many comments in an effort to reduce some of the burdens of the final rule. I therefore vote to adopt this rule.

[FR Doc. 2016–22413 Filed 9–16–16; 8:45 am]

BILLING CODE 6351–01–P

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[2] *Id. See also* NIST Framework, Subcategory PR.IP–10, at 28, and Category DE.DP, at 31, *available at http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf.*

[1] System Safeguards Testing Requirements, 80 FR 80140, 80190–191 (Dec. 23, 2015).

[2] *See e.g.,* Regulation Automated Trading, 80 FR 78824, 78946 (Dec. 17, 2015); Guest Lecture of Commissioner J. Christopher Giancarlo, Harvard Law School, Fidelity Guest Lecture Series on International Finance, Dec. 1, 2015.

[3] Minneapolis Grain Exchange, Inc. Comment Letter at 13, Feb. 22, 2016.

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FEDERAL REGISTER

Vol. 81 Monday,
No. 181 September 19, 2016

Part IV

The President

Notice of September 15, 2016—Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism

Federal Register
Vol. 81, No. 181
Monday, September 19, 2016

Presidential Documents

Title 3—

The President

Notice of September 15, 2016

Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism

On September 23, 2001, by Executive Order 13224, the President declared a national emergency with respect to persons who commit, threaten to commit, or support terrorism, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks on September 11, 2001, in New York and Pennsylvania and against the Pentagon, and the continuing and immediate threat of further attacks against United States nationals or the United States.

The actions of persons who commit, threaten to commit, or support terrorism continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 13224 of September 23, 2001, and the measures adopted on that date to deal with that emergency, must continue in effect beyond September 23, 2016. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to persons who commit, threaten to commit, or support terrorism declared in Executive Order 13224.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
September 15, 2016.

[FR Doc. 2016–22691
Filed 9–16–16; 11:15 am]
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